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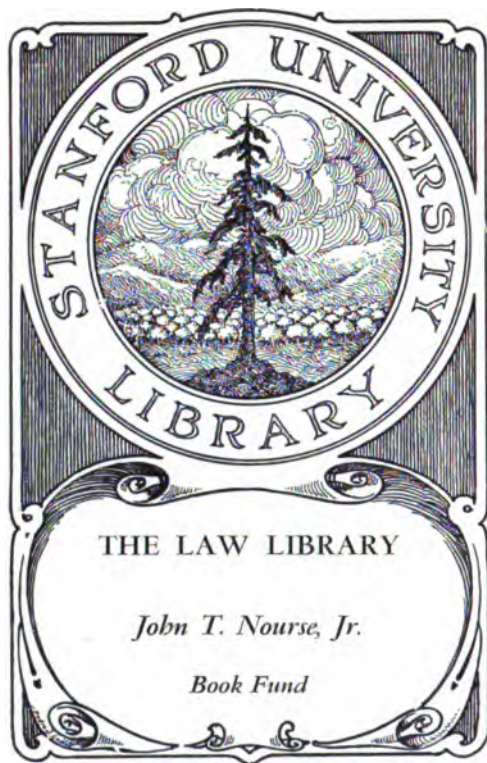
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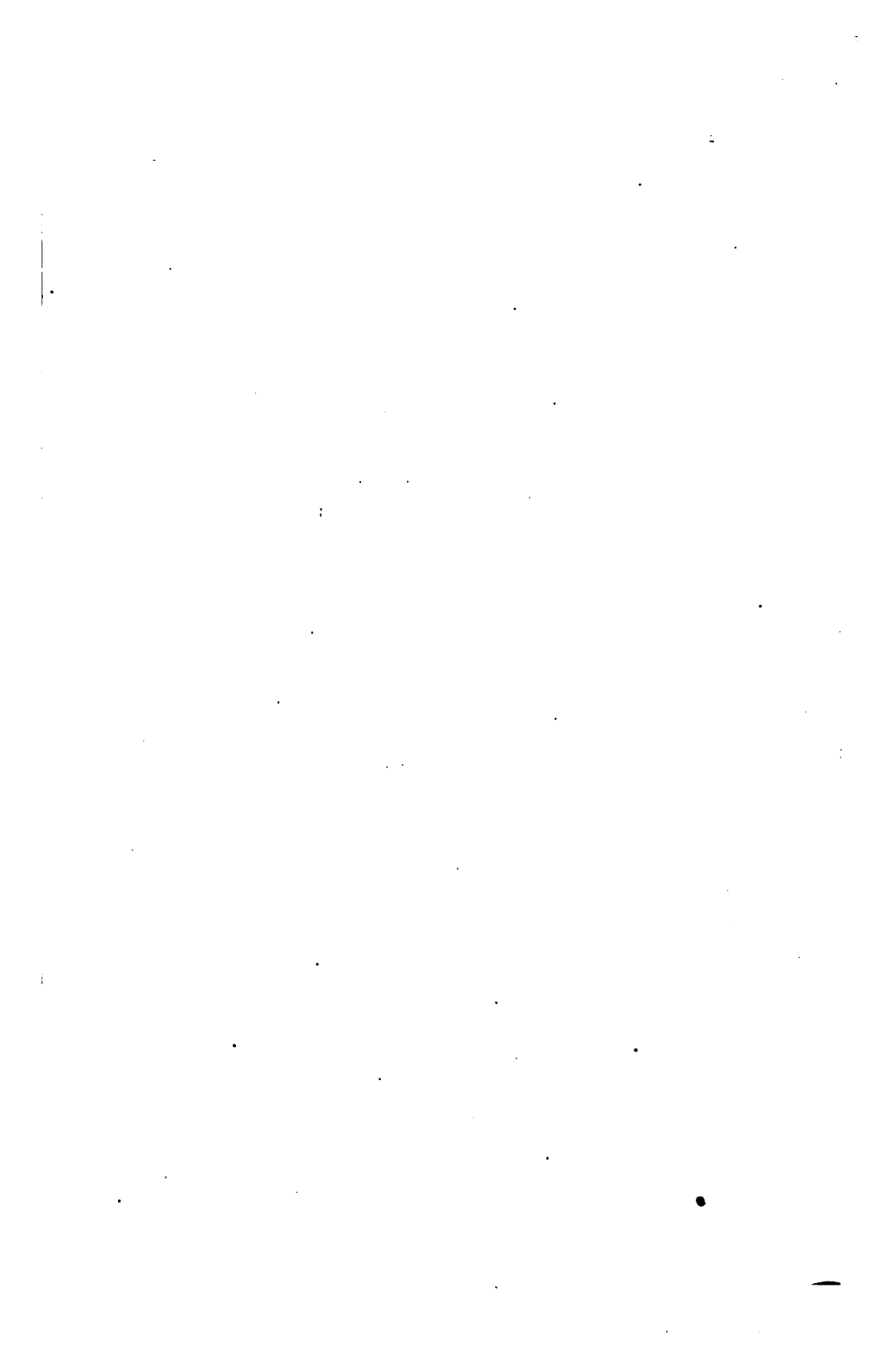
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AP
ABC
ZGC
v. 3



CHARGES

OF THE

BAR ASSOCIATION OF NEW YORK

AGAINST
HON. GEORGE G. BARNARD

AND
HON. ALBERT CARDOZO
Justices of the Supreme Court,

AND
HON. JOHN H. MCCUNN,
A Justice of the Superior Court of the City of New York,

AND
Testimony thereunder taken before the Judiciary Committee of the
Assembly of the State of New York, 1872.

Hon. L. BRADFORD PRINCE,

Chairman of the Committee.

JOSHUA M. VAN COTT,
JOHN E. PARSONS,
ALBERT STICKNEY,

}

*Committee of the
Bar Association.*

GEO. TICKNOR CURTIS,
RUFUS F. ANDREWS,

}

*Counsel for
Judge Barnard.*

WILLIAM FULLERTON,
EDWARD H. OWENS,

}

*Counsel for
Judge Cardozo.*

New York:

JOHN POLHEMUS, PRINTER, 103 NASSAU STREET.

1872.

EVENING SESSION.

MARCH 20, 1872.

GEORGE HILL, a witness called on behalf of the prosecution, sworn, examined by Mr. PARSONS:

Q. Are you managing clerk for the law firm of Develin, Miller & Trull? A. I am.

Q. How long have you assisted them in that capacity? A. Since January 1st, 1871.

Q. Did your firm commence a suit for John Scott in the Supreme Court, against the Society of Tammany, or the Columbian Order, in the city of New York? A. They did.

Q. Is that the Society which owns Tammany Hall in this city?

A. Yes, sir, I suppose it is.

Q. What was the nature of the suit? What was the suit brought for? A. The prayer of the judgment is to declare null and void a resolution of the Council of the Sachems forbidding the members of Tammany from using the meeting-room in Tammany Hall.

Q. Have you the complaint and summons here? A. I have.

Q. Will you produce them? (Witness produces papers.)

Q. Was an application made to Judge Barnard upon the complaint and summons for an injunction against the defendants? A. Yes, sir. An order was made by Judge Barnard. I only know from seeing a certified copy of the order; that is all.

Q. Will you produce the certified copy of the order? A. You have got it in your hands, sir.

Mr. PARSONS :

We put in evidence the summons, complaint, and affidavit of John Scott, and injunction-order, dated January 11th, 1872, granted by Judge Barnard, restraining the defendants from carrying out a resolution of the Board of Sachems, and prohibiting and restraining the defendants from interfering with or preventing any corporation of the defendants from meeting in said building, that is, Tammany Hall, until the further order of the Court.

[The Summons is marked "Charge 8 K ;" the Complaint, "Charge 8 L ;" the affidavit, "Charge 8 M ;" the Injunction-Order, "Charge 8 N."]

Mr. CURTIS :

Will you state to us what that is offered for ?

Mr. PARSONS :

This is offered for the purpose of showing that Judge Barnard, being directly interested, granted an injunction in violation of the statute forbidding him to act as Judge in a controversy in which he was personally interested.

Mr. CURTIS :

How do you expect to show his interest ? What is the nature of his interest ?

Mr. PARSONS :

He was a corporator himself.

Mr. ANDREWS :

Do you claim that he is a Trustee of Tammany Society, or a Trustee to Tammany Hall itself—the building ?

Mr. PARSONS :

He was a member of the Society.

Mr. NILES :

You know they are very different things—the Tammany Hall Association and the Tammany Hall Society.

Mr. PARSONS :

He was a member of the Society itself whom he enjoined.

Mr. ANDREWS :

That may be, but there is no pecuniary interest in the Society.

Mr. PARSONS :

I have not said anything about pecuniary interest.

Mr. NILES :

There are Trustees, or Sachems, which take the place of Trustees, in the Tammany Society, are there not?

M. PARSONS :

Yes, sir.

Mr. NILES :

Was he one of the Sachems, or only simply a member of the club?

Mr. PARSONS :

He was a member of the Society of Tammany.

Mr. NILES :

Was there any property connected with that, or was it a mere social organization?

Mr. PARSONS :

I understand the Society of Tammany to be the owners of the building.

Mr. ANDREWS :

Not at all. The owners of the building are the stockholders.

Mr. PARSONS :

Perhaps I am not as well informed on the subject as I might be, but the papers will show.

Mr. NILES :

I want to be sure that you understand these distinctions. I understand the fact to be this: that the Tammany Society is this old Club that has existed for 40 years or more, commencing in the

Pewter Mug, I believe, somewhere, and is simply a sort of social Club.

Mr. ANDREWS :

A political Club.

Mr. NILES :

The Tammany Hall Society is a stock association that purchased the ground and built the building, and this old Tammany Society has no business in that building against the will of the Tammany Hall owners.

Q. Was a motion subsequently made to set aside Judge Barnard's injunction, upon the ground that Judge Barnard himself was a member of the Tammany Society? A. Not to my knowledge.

Q. Did you hear of such a motion? A. No, sir; there was an order to show cause made, with this original order returnable on the following Monday, and that was adjourned from time to time. On the final hearing, the preliminary injunction was dissolved, with \$:0 costs.

Q. Then the hearing upon the injunction order came on, did it, in that way. A. Yes, sir.

Q. It was an order to show cause, and upon the return of the order to show cause, the continuance of the injunction was opposed upon the ground that Judge Barnard himself was a member of the Tammany Society? A. Yes, sir.

Mr. ANDREWS :

Who was that before?

Mr. PARSONS :

Judge Barrett.

Q. The order to show cause was upon the original order of injunction, was it not? A. Yes, sir, it was incorporated in it.

Q. Will you look at the papers produced from the County Clerk's office, one the affidavit of Douglass Taylor, verified January 20th, 1872, and the other an order made by Judge George C. Barrett, dated February 3d, 1872, and state whether that is the affidavit upon which the continuance of the injunction was opposed, and the order made by Judge Barrett upon the motion upon the order to show cause? A. The affidavit of Douglass Taylor never was served upon us; I never saw it before; it never was served upon us. This order of Judge Barrett's, a copy was served upon us.

Q. Look at the order, and see whether it states that it was made, among other things, upon affidavit of Douglass Taylor in opposition. A. It does.

Q. Do you know Douglass Taylor? A. I do not.

Q. Have you any knowledge yourself, whether Judge Barnard was a member of Tammany Society? A. I have not.

Q. Did you ever belong to that organization yourself? A. No, sir.

Mr. PARSONS :

I will offer in evidence the affidavit of Douglass Taylor, and the order discharging the injunction.

(The affidavit is marked "Chare 80," and the order "Charge 8 P.")

By Mr. CURTIS :

I understand you to say that Douglass Taylor's affidavit was never served upon you? A. No, sir, I never saw it.

Mr. PARSONS :

It is produced here from the files in the County Clerk's Office, and is recited in the order.

Mr. CURTIS :

They had no opportunity to reply to it.

The WITNESS :

That is what we contended for on the trial. We never had an opportunity.

Cross-examination by Mr. CURTIS :

Q. This affidavit of Douglass Taylor's that has been introduced was not served on the plaintiff's attorneys? A. No, sir.

Q. Now the object of that suit—that was a suit by the proprietors, was it, of the property of Tammany Hall, against the Tammany Society, to prevent the Tammany Society from the continued use of the building; is that it? A. No, sir; not as I understand it.

Q. How do you understand it? A. It was a suit of John Scott as one of the corporators and a member of the Tammany Society, against the Council of Sachems, who met and passed a resolution forbidding the members of the Society of Tammany from using the Hall in Fourteenth street, and the judgment prays that that order may be declared void, that they may be restrained from preventing the members from using the Hall.

Q. What did you understand to be the objection to Judge Barnard's taking jurisdiction in the case? A. The point raised by the counsel for the defendant was that Judge Barnard was a member of the Society of Tammany, and Mr. Develin, as counsel for the plaintiff maintained—his view was that he had no pecuniary interest in the Society, that it was an eleemosynary

institution, and that the prohibition of the statute forbidding a Judge to act in a case in which he was interested as a party, did not apply.

Q. And did that point come under Judge Barnard's consideration? A. I was not present at the argument. It was made in Mr. Develin's points, and I don't know whether they argued that point or not. We tried to get an opportunity to obtain a certificate from Judge Barnard as to his interest in the Society of Tammany. The motion was made on Friday. Mr. Develin went out of town. We had until Saturday to get the certificate of Judge Barnard; we had until Saturday morning; when it came up Judge Barrett dissolved the preliminary injunction.

Q. On what ground? A. On the ground that Judge Barnard was a member of the Society of Tammany.

Q. Then the point on which that question turned, that is, that there was no pecuniary interest, was not distinctly presented to Judge Barrett, was it? A. I was not present at the argument and I can't say. It was in Mr. Develin's points, and I don't know whether it was urged or not; I presume it was urged.

Q. Was it a part of your duty, at that time to inform yourself as to whether the Tammany Society, so called, had any interest in the property? A. It was no more my duty than in any suit which we have in the office, to look up the law points.

Q. That was one of the points in this case, wasn't it? A. Yes, sir.

Q. And did you ascertain that to your own satisfaction? A. I did, sir.

Q. How did you find it to be? A. I found that Tammany Hall, the building and the ground was owned by certain persons called Trustees.

A. A corporation, are they? A. No, sir; I think not, simply trusts—held in trust by certain individuals. I think that Richard O'Gorman, Gratz Nathan and some other individuals are Trustees who held this property.

Q. Richard Schell? A. I don't remember any other than those.

Q. John Kelly? A. I don't remember.

Q. Well, certain persons as Trustees that held this property? A. For the Society of Tammany.

Q. As Trustees? A. Yes, sir.

Q. And that that society was—what did you find that to be? A. That was started as an eleemosynary institution, to aid indigent persons.

Q. And not having any legal estate in the property itself? A. None, whatever; that was the point raised by the counsel, and upon which I understand the order was obtained, that there was no pecuniary interest in any of the corporators, except these Trustees, who were also corporators.

Re-direct by Mr. PARSONS :

Q. Did you not, in the investigation which you made, satisfy yourself that the allegations of the complaint were true? A. I supposed they were.

Q. So far as you gathered, this complaint, that is to say, the complaint drawn in your office, truly represented the facts, did it not? A. Yes, sir.

Q. Does not that complaint state, as one allegation, that the Tammany society have purchased and own real estate and buildings on Fourteenth street, in said city, between Irving place and Third avenue, known as Tammany Hall? A. It does.

Q. Does not the complaint proceed upon the claim that John Scott, the plaintiff, was one of the corporators of that society? A. Yes, sir.

Q. And was not the ground upon which the motion to continue the injunction was opposed, that Judge Barnard himself was also a corporator of that society, and in that respect in the same situation as the plaintiff? A. I think not; I was not present at the argument; I have stated that three times, now.

Q. Was it not so according to the information upon which you have testified in answer to Mr. Curtis?

Mr. VEDDER :

The order dissolving this injunction expressly states, that it was upon the affidavit of Mr. Taylor.

Mr. PARSONS :

Q. Precisely; that is so, is it not, Mr. Hill, that the ground which you gathered from such information as you had, upon which the motion to continue the injunction was denied was, that Judge Barnard himself was a corporator of the society in the same way as was John Scott, the plaintiff? A. Striking out the last part of it; I never thought of it in that light. That he was a corporator was a ground upon which that injunction was dissolved.

Q. There was no dispute of that fact, that he was a corporator? A. Yes, sir, there was; I was to get a certificate, or something of the kind, from Judge Barnard, as to whether he was a corporator or not; it was not admitted or denied.

Q. It was not denied by affidavit, or by certificate, or in any way, that Judge Barrett could take cognizance of it, was it? A. No, sir; I stated that this took place on Friday; we were given until Saturday, at 12 o'clock, to get a certificate of Judge Barnard in opposition to the affidavit of Douglass Taylor, and we were unable to get it, and the injunction was dissolved.

Q. That was in the early part of February, was it not—the close of January, and the early part of February, 1872? A. I don't remember the exact date. The order was the 11th of January, and this order dissolving the injunction was obtained on the 3d of February, Saturday.

Q. That is six or seven weeks ago, is it not? A. Well, the 3d of February.

Q. Have you ever obtained from Judge Barnard any certificate or affidavit that he was not a corporator of this society?

A. No, sir.

Q. And have you ever made any motion to relieve from Judge Barrett's order? A. No, sir.

Q. Acquiesced in it? A. Yes, sir; the suit is still pending, of course.

Q. It has not been moved for trial, has it? A. We haven't got an answer yet. They came to-day to get 30 days time to answer.

GEORGE E. MILES, a witness called on behalf the prosecution, sworn; examined by Mr. Stickney:

Q. What is your occupation? A. Stenographer.

Q. Have you been in attendance at any time recently in the Chambers of the Supreme Court when Judge Barnard was holding Court? A. I have.

Q. Did you take any minutes of the proceedings at the time? A. Yes, sir.

Q. Will you state for what day you have the minutes in your hand now? A. February 12th last.

Q. 1872? A. 1872.

Q. Will you state some of the things which took place on that day, and some of the remarks made by Judge Barnard while he was holding Court? A. Shall I state them from the paper

Q. State them from your minutes which you made. A. Well, on that day Judge Barnard presided. Recorder Hackett sat with Judge Barnard a portion of the morning, during the continuance of a case. Judge Barnard interrupted with, "what in the world is the matter with those fellows coming in there; stop that noise will you?" This was directed to either the door-keeper or the lawyers assembled, who were noisy in their conversation. A case came up, where the action was for a breach of contract. Judge Barnard denied the motion with \$10 costs, because the moving party had not proceeded in a proper manner, and remarked, "I shall make it \$10 costs; attorney's must pay for their mistakes"; then he added, "oh, I don't get any of it, though I believe that has been put down against me in the 185th charge of the Articles of Impeachment." (Laughter.) In another case, *Waddy against Egan*.

By Mr. ANDREWS :

Q. What was the title of this last case? A. I have it. "*Barnes against Gaynor and Sheridan.*"

Q. The title of this one is what? A. *Waddy against Egan*, which was a case to recover a debt. It was stated the defendants had been put in jail, held on an order of arrest for \$1,000.

By Mr. ANDREWS :

Q. Did you see me sitting with the Judge when this case was up? A. I don't recollect on this day. I recollect seeing you one day — two days.

Q. I was there when this case was up? A. Who now wants the bail reduced in order that, as he says, he may regain his liberty, to earn money to pay the debt. The plaintiff's counsel urged that if he got out, he would not pay the debt, but would go to gambling again. Judge Barnard said at the conclusion of the counsel's argument. "I will tell you what there is about this thing; he borrowed this money in Baltimore to play faro with."

By Mr. STICKNEY :

Q. How did he pronounce it? A. Judge Barnard pronounced the word as though spelled "phariorh." I have spelled it to indicate the pronunciation.

Q. Go on. A. "Now, if you had come to me, I could have told you, that you never would have got a cent of it back." Counsel replied: "The amount of it is, this man is a good-natured gambler." *Judge Barnard*: "I think it would be better to let him out, and let him go to gambling again," at which there was considerable amusement in Court. The counsel remarked, "I don't see how you have the power to do that; all the other Justices hold, the Judge has not that power." *Judge Barnard*: "Yes I have, if you had 3,000 Justices to the contrary." *Counsel*: "What becomes of our claim if he gets out?" *Judge Barnard*: "You can put him back again." *Counsel*: "Not in this proceeding; we have got to have a new case." *Judge Barnard*: "Yes you can." *Counsel*: "That is where the other Justices don't agree with you. I know your heart is a tender one, and you would do anything you could in kindness for this man; I am sorry for him, but our only remedy is to hold him to bail." *Judge Barnard*: "I am going to reduce the bail, on the ground that nothing from nothing leaves nothing; and if he has got nothing, and cannot earn anything in jail, it does no good to you. The trouble with him is, he has got among gamblers and got beaten." *Counsel*: "If the bail is reduced, I ask that he be ordered to give us the security of a note, which he has promised us." *Judge Barnard*: "Yes; he may give that if it will do you any good; I know a good many men in New York

who would give you their note for \$1,000,000, if you would give three cents on it." [Laughter in Court.] As the parties were about leaving the room, Judge Barnard called out to the plaintiff's counsel, "You can follow him around when he goes to these places of faro,"—which he pronounced as though spelled "phariorh," "and you can catch him again." [Laughter in Court.] The defendant was released on his own recognizance, bail \$100, by giving his note.

The application of another was met with the remark, "You swear that is true?" "Oh, yes, of course," replied the applicant, "I forgot that?" Judge Barnard left the room, remarking loudly as he saw the crowd just outside the door, which had gathered there in the "Stokes trial," "You can tell the boys they can go in to the Stokes trial now; there are only about 2,000 of them in there now."

Q. Give some minutes of things that took place on the 13th of February, 1872? A. Mr. Miller, a member of the firm of Miller, Peet & Opdyke, appeared in Chambers this morning, where Judge Barnard presided. In applying to the Court as Judge Barnard was about to append his signature to a paper Mr. Miller presented, he paused suddenly with the pen suspended in his hand, and before signing inquired shortly, "Are you a member of the firm of Miller, Stoughtenberg & Peckham?" Mr. Miller replied, "No; I belong to the firm of Miller, Peet & Opdyke." *Judge Barnard*: "So you don't belong to the firm of Miller, Stoughtenberg & Peckham? It is a fine firm, isn't it."

Q. I will ask you a question there; Mr. Peckham of that firm is the gentleman who has been engaged in certain prosecutions to recover certain stolen city monies, is he not? A. I believe that is the fact.

Q. You may go on with the minutes? A. Mrs. Robertson, of No. 200 Broadway, made an application to amend an order made in a case in which Philo T. Ruggles had been appointed Referee, a divorce case. Judge Barnard, upon looking at the order, said, "I shall sign no order unless I can sign it to a man whom I can rely upon. I am not going to appoint any one, even by consent, unless it is satisfactory to me; I didn't appoint this Referee."

Counsel: "This gentleman was not appointed by consent."

Judge Barnard: "Don't care, I shan't do it; if you don't like it, you can put it in for the 95th article of impeachment." [Laughter in Court.]

Q. Do you know who Mr. Philo T. Ruggles is? A. I don't sir. In another case, Judge Barnard said to a lawyer who appeared as defendant in a suit—

Mr. ANDREWS:

Give us the suit. A. I can not do it; in which the plaintiff's counsel claimed the defendant had kept putting off the trial, "can't let you off this time; I guess you have got to come up

to the bull ring, old fellow, this time." The defendant had been urging further postponement on account of sickness. And the counsel in another suit, the moment Judge Barnard saw the counsel who appeared on behalf of the defendant—

Mr. ANDREWS :

Can you give the title of that suit? A. Fourth National Bank *agst.* Parker *et al.* He remarked to the counsel who appeared on behalf of the defendant: "I am not going to hear you again on this matter; you have been here seven or eight times on this same affair, and I told you before I should not hear it." The counsel stated that he had only appeared twice before on this matter. Judge Barnard replied, "Yes, you have, and I must say, if I was not on the bench, I might use plainer language, but I must say, that you stated to me the other day, with singular inexactness, that you had only been here once." The counsel replied that he had only been there twice, once upon the return day, and once when the motion was made. *Judge Barnard*: "I will adjourn the case for you to any time you may agree upon, but, as for hearing a miserable judgment debtor case, when nothing is to be gained, and when, as I have been informed, a record of judgment was found in the County Clerk's office, and somebody saw fit to ask the plaintiff to see whether he should not break this man up, I am not going to stand it." *Counsel*: "Does your Honor say that that is this case? It is a falsehood, whoever said it, but I am ready to stand by it, if your Honor charges me with that."

Mr. ANDREWS :

Who was the counsel? A. Peter J. Gage. *Judge Barnard*: "You can stand by it, but I am not going to hear any more about this case." *The Counsel*: "I am here simply in the interests of my client, and that is all." *Judge Barnard*: "I told you the other day I was not going to have you here, day after day, arguing this matter." *Mr. Gage*: "If I cannot come here in the interest of my client, why, strike my name from the rolls of the bar." *Judge Barnard*: "You can go into the United States Court if you want to." *Mr. Gage*: "There is nothing to go before that Court for." *Judge Barnard*: "Then go before Judge Barrett; my name isn't Barrett; this case was to come before him."

Both parties finally consented to an adjournment.

Counsel proceeded to argue in another case, when Judge Barnard interrupted with—

Mr. ANDREWS :

What case is that? A. I have not got the case.

Q. Have you got the name of the counsel? A. I have it—Mr.

La Rocque, who proceeded to argue in another case, when Judge Barnard interrupted with, "Stop, until they have fixed up their adjournment; it is such an important matter," referring to the previous case.

Mr. ANDREWS:

You give what he said? A. Certainly; I noticed that. As that adjournment was not directly fixed upon, Judge Barnard occasionally threw in remarks like: "You are making enough trouble about it; I hope you won't fix it on Sunday." (Laughter in Court.) That is all on that day.

Q. Will you give some items that took place on the 20th of February, 1872? A. When Judge Barnard came into Court this morning, he announced from the Bench as follows: "There are several members of the Bar here whom I know, and have a personal respect for, and I deem it due to them to state that the article in the *New York Times* of this morning, which states that I uttered from the Bench that I had \$100,000 in the Bank to spend for the purpose of bribing this Judiciary Committee, is a lie. The man who wrote it is a liar, and, in my judgment, it is written by one of the most infamous lawyers of New York city. Whoever he may be, he is a liar. I never uttered any such thing, and I never heard of it. I have not \$100,000 deposited to my credit, and I wish I had."

While the calendar was being called, at twelve o'clock, a case in which a judgment debtor was defendant, was brought forward by counsel. Judge Barnard refused to hear him, saying: "It is twelve o'clock now, and judgment debtors have to leave at that time." *Counsel*: "This case was put down to-day by mistake." *Judge Barnard*: "I can't help it. I will put it down for to-morrow by accident." (Laughter.)

Upon calling another case, Judge Barnard put it down for to-morrow. Counsel plead an actual engagement on that day. "Oh, well," replied Judge Barnard, "I shall be actually engaged myself to-morrow, on trial."

In another case, counsel wished it to be put down for Friday. Opposing counsel objected, saying, "I am sorry, but I am engaged on Friday." *Judge Barnard*: "It is not necessary to discuss that; Mr. Barnard has got a suit of his own to attend to. I cannot put it down for any day."

In a case against a Railway Company—

By Mr. ANDREWS:

Q. What Railway Company is that, do you know? A. I don't know.

Q. Do you know the attorney? A. No, I don't recollect now. I knew at the time. In this case against a Railway Company, in which counsel for the plaintiff desired an adjournment, Judge Barnard put it over until Monday. Defendant's counsel ob-

jected, on the ground that it would be a serious detriment to the Company. Judge Barnard said: "It won't tumble down before next Monday. I can give you some of the \$100,000 that I have got in Bank for the Judiciary Committee."

In the case of an imprisoned debtor, Judge Barnard put off the hearing of the case until another time. Counsel asked, "When will your Honor be in." *Judge Barnard*: "I will be in to-morrow." *Counsel*: "Will you be here to-morrow?" *Judge Barnard*: "Yes. I am not out yet, am I? You would not get me out so quick as that, would you?" (Laughter in Court.) "I shall fix your case for ten o'clock to-morrow. You can come here earlier if you like; I shan't be here, though. You can come at seven o'clock, if you want."

In an action for divorce, in which an application was made—

MR. ANDREWS:

Give the title if you can? A. "Hebert *agst.* Hebert," in which an action was made to have the little son, three years old, given into the custody of the father. Judge Barnard said that the child ought not to be separated from his mother at his tender age. The counsel for the father said: "Your Honor, if you have any desire to see these parties reconciled" — *Judge Barnard*: "Oh, I don't care whether they are reconciled or not; it makes no difference to me." *Counsel*: "I supposed your Honor, as a Justice, would be anxious to have all such differences healed." *Judge Barnard*: "Well, I think the best course is to keep the children together, if you want the father and mother to become reconciled." Counsel for the mother here stated that the statement in the affidavit of the other side, was utterly false, and he said, further, that the father had twice brought an action for divorce in Louisiana, both of which actions were decided in her favor. He had never supported his wife. He resides in Louisiana. He wants to get the child into his custody and then take it to Louisiana, away from the custody of this Court, so that when judgment is obtained this Court will have no jurisdiction. *Judge Barnard* (turning to counsel for father): "This application, Counsellor, under the circumstances, is rather rough." Judge Barnard then denied the application, saying, in response to counsel's request, that he read the letters passing between the two. "No, I won't read the letters; he cannot get this child from me; if he wants any children, he must go somewhere else to get them."

A little later, Judge Barnard, on account of the noise in the room, said: "I wish those gentlemen who have no business here would go out. I don't believe but what some of them come here to get a watch or two; waches are lost here every day."

"Will your Honor hold Court next Monday?" remarked a lawyer to the Judge. *Judge Barnard*: "Why not?" *Coun-*

sel : "I was informed that you would not hold Court." *Judge Barnard* : "Would not?" *Counsel* : "No." *Judge Barnard* : "The man that informed you probably got his information from the Bar Association."

In a divorce case, in which alimony is claimed against the husband—

By Mr. ANDREWS :

Q. What is the title? A. I haven't got it.

Q. No title? A. No title;—in which alimony is claimed against the husband, who claims to be a young nobleman, it was urged on his behalf that he had no money to pay alimony; but, said opposing counsel, "he has strong muscles, and can earn the money." *Judge Barnard* : "Well, then, you can take it out of his hide. Why don't he trade his title? He can sell it to the Count Joannes."

In another instance, where counsel stated that false statements had been made to him, Judge Barnard said : "I have more than 60,000 lies told to me in the course of a year, and I never pay any attention to them."

Q. State some things that took place on the 21st of February.
A. Wednesday, February 21st. A lawyer asked Judge Barnard to-day in Court—

Mr. ANDREWS :

Give us his name? A. I cannot give his name, because I don't know it.

Q. How did you know he was a lawyer? A. By seeing him frequently in Court and hearing him act in cases.

By Mr. CURTIS :

Q. Was this at Chambers? A. All in Chambers, yes, sir. The lawyer asked Judge Barnard to-day, in Court, if he would sit to-morrow, on account of its being Washington's Birthday and a holiday. Judge Barnard replied : "I don't know that it is; I shall be here; I don't know why it should be a holiday, on account of his birthday, any more than his death-day."

Another lawyer, in making an application to the Court in rather a low tone, was interrupted by Judge Barnard with, "I can't hear you; why don't you speak out so that I can hear, and not stand there grumbling?"

The case of Mr. E. T. Hewlett, who was imprisoned for debt, was again brought up to-day, and plaintiff's counsel stated that Hewlett had not made a correct return of his property, he had not included three shirts and a suit of clothes. Judge Barnard made the remark : "He is minus three shirts, is he? I know lawyers who come here every day with none at all." [Great laughter in Court.]

In another case, where counsel were engaged after application in making an order, Judge Barnard said, when they had concluded and submitted the Order, "Now, have you got the Order all right, for if you havn't you will be in here sixty times between now and to-morrow morning."

A case was brought up in which the application was made to appoint an assignee. Judge Barnard appointed Jacob Valentine.

By Mr. ANDREWS:

Q. Do you know the title of the case? A. I do not. Judge Barnard appointed Jacob Valentine, an officer of the Court, remarking: "He is the Court Receiver. He has been receiving a year now for a judgment debtor, and has not got a cent yet." [Laughter.]

In a suit against E. A. Heath, whose place of business is at No. 24 Murray street, while defendant's counsel was speaking of the fine prospects of his client, which would be destroyed, if his business at No. 24 Murray street was stopped by injunction and placed in the hands of a Receiver, counsel for plaintiff interrupted with—"I hope his Honor has not got his money invested there?" "Oh no," said Judge Barnard with a sneer, "I've got my money all invested, according to the *Times*, in the Bank, to buy up the Judiciary Committee with." [Laughter.]

By Mr. STICKNEY:

Q. Will you state whether you have been in the habit of frequently attending the Court room when Judge Barnard was holding Court. A. I have.

Q. State whether or not this is a fair specimen of the proceedings which are ordinarily held before him when he is holding Chambers? A. I think it is.

Q. And of his action and remarks? A. Yes, sir.

By Mr. NILES:

Q. How long have you been in the habit of noticing these things? A. Well. I have noticed it—well, it is a very long time, for it has been my custom to be in Court daily.

Q. How long, about? A. I should think, it might be a year.

Q. Do you mean to say that he had any such habits as this, before the time when this memorial was presented to the Legislature? A. I mean to say that he has been in the habit of speaking so during all that time; that it has been, as I have heard others remark, a good place to go to be amused.

Cross-examined by Mr. CURTIS:

Q. Mr. Miles, what are you, what is your business? A. I am a Law Reporter.

Q. Are you attached to any newspaper? A. Yes, sir.

Q. What paper? A. *New York Tribune*.

Q. Regularly on the reporting staff of that paper? A. Yes, sir.

Q. How long have you been there? A. Three years; since January last.

Q. Who employed you to take these notes on these occasions? A. The Bar Association.

Q. Who gave you the instructions, or engaged you to do it? A. It came from the firm of Hamilton & Bennett; I think Mr. Hamilton is the first one who spoke to me about it.

Q. Hamilton & Bennett? A. Yes, sir.

Q. Where is their place of business? A. 229 Broadway.

Mr. STICKNEY:

We do not conceal the fact; it was for me.

Mr. CURTIS:

Do you say that you have sent a reporter in there to take down these?

Mr. STICKNEY:

Undoubtedly I did, sir.

Mr. CURTIS:

And did it on behalf of the Bar Association?

Mr. STICKNEY:

They did not direct me to.

Q. Were you paid for these services? A. I have not received all the pay; I have received some.

Q. Who has paid you? A. Mr. Hamilton.

Q. Is Mr. Hamilton a practicing lawyer in this city? A. No, sir.

Q. What is he? A. He is a stenographer.

Q. The firm is a firm of stenographers, is it? A. Yes, sir.

Q. Aside from your employment on these occasions to watch Judge Barnard, what has been the amount of your attendance in his Court on other occasions, when you were not employed by the Bar Association to watch him? A. Daily attendance?

Q. Daily? A. Almost daily attendance, except when some other matters took up my time. I report the Courts for the Tribune, and am obliged to be there daily.

Q. I take it that, interspersed between these cases, in which you have taken down the remarks of Judge Barnard, there were a great many things occurring in which you took down no remarks, were there not? A. Do you mean on those days?

Q. Yes, sir. A. Why of course it is not a transcript of all the proceedings.

Q. You took down what struck you as grotesque, or amusing,

or unusual—what you supposed would satisfy those who employed you? A. What I supposed would be wanted by those who employed me.

Q. You didn't take down anything else except what you supposed would be wanted by those who employed you? A. What would be wanted and necessary to explain the case.

Q. Explain what case? A. Explain the case that I took down.

Q. The proceedings, you mean, in any case? A. The proceedings in any case.

Q. On that occasion that Judge Barnard said to the crowd, "Boys, you may go into the Stokes trial," or something like that, where was that crowd? A. All around the door.

Q. Standing inside of the Chambers? A. No. Of course there were a large number inside of the Chambers, but there were others outside, and the door was being constantly opened and slammed, and a good deal of noise and muttering, so that it disturbed the Court.

Q. Where was Judge Barnard when he made this observation to them? A. I would not be positive whether he was sitting on the Bench, or had taken his hat and was leaving the room.

Q. Wasn't he passing out among this crowd—through them? A. No; he was passing out by way of the Clerk's office.

Q. Into the adjoining room? A. Into the adjoining room.

Q. These people were standing all around in the bar? A. All around the door.

Q. All around the outside door? A. Of course. I won't be positive who he referred to, but I know there was a crowd standing outside the door, and they made a good deal of noise; there was a good many men inside, and there was the usual amount of whispering.

Q. Had not Judge Barnard adjourned Chambers for the day? A. I won't be positive; I think I have stated it in the notes.

Q. How have you stated it there? A. Well, I don't recollect; I think it was after he had adjourned the Court.

Q. On these different days, upon which you have given these accounts, what officers were in attendance on the Court? A. The usual officers.

Q. Well, give their names? A. Well, Mr. Mc Nierney was one; I won't be positive whether Mr. Valentine was another or not. He was in and out.

Q. Was Mr. Beamish there? A. I think he was; he was usually there sitting down in his chair there.

Q. Was Mr. Buchanan there? A. I can't say; I don't recollect; Mr. Allen was also attending to the door—the outside door.

Q. This Mr. Egan whom Judge Barnard released on his own recognizance, an insolvent debtor, do you know who he was? A. I do not.

Q. Don't you know he was Gen. Egan, a man who distinguished himself very much in the late war? A. I do not.

Q. You do not? A. I do not.

Q. You made no inquiry who he was? A. No, sir; that is, only so as to hear the name. I made no particular inquiry that I remember.

Q. You didn't hear it stated in Court that he was Gen. Egan? A. Not to my recollection; I may have, but I don't recollect now.

Q. Refresh your recollection as well as you can, and state whether you did not hear it stated there at the time that he was General Egan, a distinguished officer in the late war? A. I did not hear it stated that he was a distinguished officer in the late war.

Q. Did you hear that he was an officer in the late war? A. I would not be positive.

By Mr. ANDREWS :

Q. Did you not hear it stated on that occasion, that this defendant, Gen. Egan, had been three times promoted by Gen. Grant in person, on the field of battle, for gallant conduct? A. I don't recollect whether the name of Grant was mentioned, nor the number of times; but I think I do recollect his saying that he was promoted on the field of battle.

By Mr. CURTIS :

Q. Was that stated there in open Court? A. I think it was.

Q. Why didn't you take down that statement? A. Because, coming from counsel it did not strike me as being necessary.

Q. Did Judge Barnard know that you were in attendance there taking down his observations in this matter? A. Not that I know of.

Q. Do you know whether the Bar Association, or anybody who employed you to take down these observations, gave Judge Barnard any notice of it? A. I don't know.

Adjourned to March 21st, 1872, at 10 A. M.

In the matter of the Charges preferred against Hon. Geo. G. Barnard, Justice of the Supreme Court. Before the Committee of Assembly.

March 21, 1872.

WILLIAM MITCHELL, called on behalf of the prosecution, sworn.

Examined by Mr. PARSONS :

Q. Were you at any time a Justice of the Supreme Court in this District? A. I was from 1850 to January, 1858.

Q. How long have you resided in the city of New York, and during what portion of that time have you been a member of the Bar?

A. I have resided in the city of New York the most of 71 years. I have been a member of the bar the most of 49, I think.

Q. And are you still actively engaged in the practice of your profession? A. I am, mostly as Referee; but little in Court.

Q. Do you come in contact with the members of the profession generally? A. Yes, sir; more particularly with those who come to me with references.

Q. Has the action of the Courts within the last few years been a subject that has come under your attention and observation, and which you have heard discussed among the members of the profession generally? A. It has, among those whom I have met.

Q. Will you state whether or not there is a prevailing opinion among the members of the profession in the city of New York, so far as you know, in respect to the action of the Courts within the last few years, and particularly of the Supreme Court, and if so, state what that opinion is? A. I think there is, according to the best of my knowledge, and from all that I have heard, and as to some of the Judges of the Supreme Court that it is quite unfavorable to them. I suppose I am only to speak now of Judge Barnard, and I will state that the opinion that I have heard expressed with reference to him has been, that he is a man of a great deal of ability in the management of the Chambers business of the Court, and of a great deal of quickness, and that he is clear-headed; that he is fair where there is no prejudice or bias on his mind in favor either of counsel or of a party; but where there is any danger either of prejudice or bias, that then he is a very dangerous Judge for the party against whom that prejudice or bias prevails. In regard to myself, perhaps I ought to say, that he has always treated me with the greatest respect, and that so far as I have had any business, which has not been much, in the Courts, I have no reason to complain of his conduct towards me individually.

Q. Has the name of any other Judge been prominently mentioned in connection with this unfavorable opinion which you have testified to?

Mr. CURTIS :

Mr. Chairman, had I not better suggest, or will the gentleman allow

me to suggest, that in the absence of any other Judge, it is hardly fair to ask the question of this gentleman.

MR. PRINCE :

Unless you ask the question generally, what Judges they were.

Q. Will you state, in answer to the question suggested by the chairman, what Judges are mentioned in any such connection? A. Is the question confined to the Supreme Court; I understand it so?

Q. No, sir; you may answer, in the administration of justice; the action of the Courts in the city of New York? A. Judge Cardozo and Judge McCunn are unfavorably spoken of.

Q. Are there any particular proceedings, or any particular processes of the Court, the use of which has been mentioned in connection with this unfavorable opinion to which you testify? A. It is in relation to the appointment of Referees, the granting of injunctions and of Receivers, the compensation to Referees who are supposed to have been friendly to the Judge, and the compensation of Receivers.

Q. How general is that opinion, so far as your own observation extends? A. So far as my own observation extends, there have been very few who have vindicated the Judge when there has been any conversation on the subject—either of the Judges

Q. Would you say that it was an almost universal opinion? A. I do not like to use that expression, because I speak only from those as to whom I have heard speak of it, and "universal" might mean the universal opinion of the Bar. So far as I have heard, it has been the general opinion.

Q. You have spoken of the action of Judge Barnard as influenced by prejudice or partiality in respect to particular individuals; do you mean lawyers or litigants? A. I have heard it mentioned both ways.

Q. And the opinion is to the same effect? A. The same effect.

Q. Is there any distrust, do you know, so far as this general opinion is concerned, of going before Judge Barnard? A. There is, if there is any apprehension that there would be on the opposite side somebody who would have influence with him. There is a distrust also that in the appointment of Referees, those would be appointed who would charge very highly in partition suits and mortgage suits.

Q. Do you know whether there is any opinion on the subject—any general opinion, of course, I mean—on the part of the members of the profession on the subject of any particular lawyers being specially retained with reference to cases before either of these Judges? A. I have heard such things mentioned; I cannot say how extensive that opinion is.

Q. What is your recollection as to the character of that opinion, whether it is general or not? A. I should not say any more in relation to that, than that I have heard it frequently mentioned; whether it is general or not, I could not say; I have not heard it spoken often enough to be willing to say that it is general.

Q. Have the names of any particular lawyers been mentioned in that connection? A. I cannot recollect any names that have been mentioned.

Q. Did you ever happen to be in Chambers when Judge Barnard presided there? A. Yes, sir; I have been a number of times.

Q. Can you recollect any observation in any case on any occasion made by Judge Barnard when an application was made to him for a Referee? A. Yes, there are two instances; one in which I was making a motion for a Referee, and the counsel on the other side, as I supposed, with a view to flatter the Judge, said he was desirous of naming a Referee that would be agreeable to all parties, or a similar expression.

Mr. CURTIS:

I did not hear that expression.

The WITNESS:

The counsel said that he was desirous of having a Referee appointed who must be agreeable to all parties, and then concluded by naming Samuel Jones, who was then not on the Bench.

By Mr. CURTIS:

Q. Can you mention the time when this occurred? A. This was before Mr. Jones was on the Bench.

By Mr. ANDREWS:

Q. Nine or ten years ago, was it not? A. Yes, sir. Judge Barnard looked up, and his answer pleased me in one respect; that is, that it showed that he meant to reprove the man for interfering; and he said, "I can take care of my own friends; I don't wish anybody to interfere with me."

By Mr. PARSONS:

Q. Did he take care of Mr. Jones in that case? A. He appointed Mr. Jones, but, I think, Mr. Jones was a very suitable person to appoint; I don't think anybody would doubt about that; the reason that attracted my attention, perhaps, I ought to say, is that it seemed to me that a Judge has no right to make an appointment of a Referee because the Referee is his friend; that the reference ought to be made on account of the interests of the parties; and while I was pleased that he reprov'd the other for his interference, and with a view, as it seemed to me, to flatter him, I thought it was a great mistake in the Judge to entertain and to express such an opinion; that made it impress itself on my mind.

Q. What relationship existed between Mr. Jones and Judge Barnard; are they brothers-in-law? A. I think they married sisters. They are either brothers-in-law, or they married sisters; it is some such connection as that.

Q. Were you before Judge Barnard at Chambers a any time during the past year? A. Yes, sir, I was.

Q. Do you remember anything said by him on that occasion in reference to the appointment of Referees or the appointment of any particular Referee? A. Some lawyer was making an application for the appointment of a Referee in a case, and mentioned the name of Gratz Nathau. The Judge, in his humorous way, said—"Gratz Nathan—Gratz Nathan—I know no Gratz but one; that is Gratz Coleman; he is my Referee."

Q. Was it "he is my Referee," or "he is my Gratz?" A. Well it was one or the other, I am not certain which.

Q. Did he allude to Mr. James H. Coleman, as you understood? A. I understood he alluded to a Mr. Coleman, whose first name I do not recollect, who has been frequently appointed by him.

Q. As Referee? A. Yes, sir.

Q. When did that occur? A. I think that was in the Fall of last year; I did not return to the city until September; it was between September and January last.

Q. Did anything else occur on that occasion, which attracted your attention, on the part of Judge Barnard? A. Yes; but it was another of those things which are witty, and I think would be proper enough in a private room, but not on the Bench.

By Mr. CURTIS:

Was it at Chambers? A. It was at Chambers; yes, sir; the Chambers is also in the Special Term room; it was in transacting Chamber business.

Q. You may state it if you please, sir. A. He called out to a gentleman who was there, by name—I forget what the name was—and said to him: "Yesterday such a person"—naming some one who was a party to a suit—"called on me and asked me to see you"—the person whom he was addressing being the Referee in the case—"in relation to the suit in which you are Referee; I told him I would, and I have seen you accordingly."

By Mr. ANDREWS.

Q. He meant that he had seen him there in open Court? A. Yes, sir.

By Mr. PARSONS:

Q. Were you a Judge of the Supreme Court under the present judicial system, and under the Code of Procedure. A. Yes, sir.

Q. It has been suggested or claimed, that the unfavorable opinion of the action of the Courts due to the appointment of Receivers, and to the issue of injunctions, is attributable to the change in the practice inaugurated by the Code; will you state, if you please, whether there is any necessary connection between the change of practice and the unfavorable action of the Courts of which you have spoken? A. I cannot see that there is any; I do not see any connection between them; I think there was more caution used under the old system in granting injunctions, more in appointing Receivers; the difference, I think, being from the men who were holding the office, not from the authority of the law.

Q. And in what length of time has that abuse grown up? A. Certainly within twelve years, and I should think much less.

Q. Within what length of time, according to your observation? A. Well, I think it has been growing within perhaps eight or ten years.

Q. Have you ever heard it spoken of except in connection with the names of Judges Barnard or Cardozo? A. Yes; in connection with the name of Judge McCunn.

Q. Are those the only Judges in connection with whom you have

heard that abuse the subject of discussion and observation? A. I think they are.

Cross-examination by Mr CURTIS:

Q. Have you any personal knowledge of any instance in which Judge Barnard has allowed excessive fees to a Referee, or what might be considered excessive fees to a Referee? A. Within my own knowledge?

Q. Yes, sir, personal knowledge? A. No.

Q. You have no knowledge on that subject except what you have heard in conversation with others? A. Yes, sir, that is all.

Q. And how is it with regard to the injunctions; have you any personal knowledge of his ever having used the power of injunction improperly? A. No, sir, not personal knowledge.

Q. And as regards the appointment of Receivers and their fees, have you any personal knowledge of any instance of excess or impropriety in that matter? A. No personal knowledge.

Q. As to partiality to particular lawyers and litigants, have you any personal knowledge of any instance in which, in your judgment, a gross and excessive partiality has been shown to particular counsel or particular litigants? A. I have no personal knowledge of it.

Q. Have you any personal knowledge of any instance in which any particular lawyer has been retained to go before Judge Barnard, as being supposed to be personally more influential with him than anybody else? A. I have no personal knowledge.

Q. Do you practice yourself now-a-days, exclusively, as a Referee? A. No, sir; not exclusively; I do a little in the Courts.

Q. Do you do a good deal of business as a Referee? A. A great deal; that is to say, the most of my business is that of Referee; I do not know but what more than seven-eighths of it.

Q. The question which I am about to ask you, I should not ask you except that it has some bearing upon testimony which has been given on this subject; I wish you would state what has been your annual income within the past three years, from business as a Referee? A. I do not think I could tell; if I had supposed that the question would be asked, I would have prepared myself to answer that question, because I can tell exactly; I am willing to send you in a memorandum.

Q. Could you give me an approximate idea? A. I would not like to do it, because in reality it differs very much one year from another, and my income differs so much that what it was this year I do not think last year would bear any comparison to it.

By Mr. PARSONS:

Q. Your references are mostly litigated, are they not? A. Yes, sir.

Q. Almost exclusively? A. Yes, sir.

By Mr. CURTIS:

Q. Have your references come from any particular Judge, in general? A. No, sir.

Q. From all the Judges alike? A. They have come mainly from consent of attorneys.

Q. Have you been appointed Referee in any cases by Judge Barnard? A. I have never been appointed by Judge Barnard, except by consent, so far as I have known.

Q. I do not care whether it was with or without consent? A. I cannot tell whether I have or not; I have not been in the habit of looking to see who the Judge was who made the appointment.

Q. Are you not able to recollect now that Judge Barnard has frequently sent cases to you as Referee, either when the parties have or when they have not asked for it? A. As I said to you, I think, there are not a dozen references in the course of a year, that I have when they have not been by the consent of the parties.

Q. I assume that they have been by consent. I assume that they have been in every instance by consent? A. Some of them, I have no doubt, are by Judge Barnard.

Q. They have been litigated cases—cases requiring a trial? A. Yes, sir.

Q. Is that a practice which makes it necessary, in order that the Referee should have any compensation beyond the statute compensation, that the consent of the parties should be obtained to his charging something more than the statute compensation? A. The statute requires that unless the parties assent, the Referee shall receive only three dollars a day, but the practice in the profession is for the Referee to make his charge, and never to charge so little as three dollars a day; I always charge five dollars for every hour I attend, unless the amount of litigation is so small that I feel some regard for the parties, and think I ought not to charge so much.

Q. The attorneys generally stipulate about that beforehand, do they not? A. They do not; they generally trust to the Referee, that he will charge about what is right.

Q. Then if the losing party does not consent to pay, it goes before the Judge for confirmation of the charge, does it? A. No, sir; so far as I know, if the losing party will not consent in litigated cases, the Referee can only charge three dollars for each day. I do not know any right of the Judge to interfere with the charge.

By Mr. PARSONS:

Q. And that is all that can be taxed by the clerk, is it not? A. That is all that can be taxed, and all, I think, that the Court can allow; but on sales in partition and foreclosure there has grown up a practice of the Judge making the allowance where the parties do not agree what the allowance should be.

Q. Then it comes before the Judge? A. Then it comes before the Judge.

Q. Is not that required by law; or isn't it authorized rather by law; isn't that practice authorized by the law? A. I do not know any law for it; I do not know any law by which a Referee on sale can charge any-

thing more than, say, three dollars for every attendance he gives to the case.

Q. It has come to be a universal practice, hasn't it? A. I presume it is; I do not know, though; I have had no actual knowledge of what is doing, except what I hear; I suppose it is the general practice now for the Judge to make the allowance or for the parties to consent to the Referee's fees.

Q. Do you mean to be understood as expressing the opinion here, that the regulations of the Code which governed the injunction power—I speak of that as separate from receivership—that the regulations of the Code which govern the injunction power are not much more loose in themselves than the old Chancery practice? A. I do not perceive in what respect they are more loose than the old Chancery practice was.

Q. Do you consider them to be an embodiment, an enactment of the old Chancery practice? A. They are not exactly that; but they do not differ very much. On the application for an injunction formerly, the lawyer went either to the Master of Chancery, or to the Vice-Chancellor, or to the Chancellor; he went with his complaint sworn to, and, if it was necessary, surety was required, and the same thing is substantially required in the Code—except that the amount of the surety is a certain amount fixed.

Q. Under the old Chancery practice wasn't it the universal rule, that the notice to show cause was issued in almost all cases. A. Yes, sir.

Q. Wasn't that the general practice, that a notice to show cause was issued? A. I do not think it was the general rule; the Judge could always have granted an injunction; the Vice-Chancellor or Chancellor could have granted an injunction without any notice.

Q. On *ex parte* application? A. On *ex parte* application.

Q. He could have done so? A. He could have done so; and it was the practice to do so, if the papers showed that there was need of immediate haste in granting the injunction; if there was a doubtful case presented, then any district Judge would of course grant only an order to show cause, or appoint a day to be heard; but Masters in Chancery granted injunctions, and without any power to grant an order to show cause.

Q. Has there not grown up under the Code an almost universal practice to grant *ex parte* injunctions on the exhibition of a certain degree of exigency? A. Well, I will say down to 1858, when I knew of what was being done more thoroughly, I do not think there was any sort of difference in the freedom in granting an injunction and that which prevailed before in Chancery.

Q. Has not there been a change in that respect all over the State? A. That I do not know.

Q. Are not injunctions granted, haven't you understood? Isn't that generally current, in your opinion, that *ex parte* injunctions are granted all over the State now with very great freedom and approach to looseness? A. I have not heard any such opinion expressed.

Q. You have not? A. No, sir.

Q. Do you know how it is in Albany county, or in the city of Albany? A. No; I do not.

Q. I think you said you had no personal knowledge in regard to Mr. Coleman? A. No, sir; I do not know him.

Q. In respect to the transaction of business in Chambers in this city by Judge Barnard, there is always a very great crowd of lawyers there, is there not? A. There generally is.

Q. And much business transacted? A. Yes, sir.

Q. And isn't it always carried on by him in a conversational manner? A. Yes, sir.

Q. Without form? A. Yes, sir.

Q. Without form and regularity of discussion on the one side or the other; opening, answer and reply? A. Yes, sir.

Q. It is without that form entirely, isn't it? A. It is a great deal so.

A. Aside from personal disposition and tendencies and temperament of different Judges, do not all Judges transact the Chamber business very much in that way; leaving out the jocularity of remarks, do not they all transact it in an informal manner, as if it was in a private office—now-a-days, I mean? A. I do not think Judge Ingraham does, for instance.

Q. Does Judge Ingraham require formal discussions? A. I think so.

Q. More so? A. Yes. I don't think there is any objection to the manner of Judge Barnard coming at the facts that he wants to get at in that informal way, except it leads to the want of that respect which ought always to be preserved by the Court, or it will not be observed by other people.

Q. Isn't it your opinion that that is one great defect of all the courts in New York now-a-days, that the absence of form, and what might be called ceremony, greatly impairs the respect that the public would otherwise entertain, and ought to entertain, for the judicial function? A. No; I think it depends on the man. I think it does still.

Q. Do you mean to say that a greater observance of form and of outward manifestation of the dignity of the office would have no salutary effect? A. No, I do not mean to say that; to show you that I do not, I will say what Judge Edmonds once said. He said that a Judge should not be seated on the same level with the Bar; that he ought to be raised at least two or three steps. I believe that is true.

Q. And isn't it true of a great many other things which are now absent from the Courts of New York? A. I do not see what there is that might not be just as well to preserve the dignity at the present time as at any other time.

Q. That is a matter of opinion; if I was brought up under a different system of things, I suppose I would have different notions.

Re-direct examination by Mr. PARSONS :

Q. You have spoken, in answer to a question by Mr. Curtis, of the practice which has grown up within the past few years, to grant allowances in partition and foreclosure suits in the Supreme Court? A. Do you mean to Referees?

Q. To Referees; has not that practice been due to the action of Judges Barnard and Cardozo, confirmed by the decision of the General Term of the Supreme Court, when they were in the Court, holding that orders granting such allowances were not appealable? A. I have only heard some such things stated, and I do not feel at liberty to say yes or no to that; I have heard that such was the case, that such an order was made, but I could not testify to it; I do not think I ought to testify that I have heard such a matter.

Q. Will you answer the former part of the question, whether the practice has not been due to the action of these Judges, so far as you know, or so far as general report informs you? A. According to what I have heard, I should think it originated with Judge Barnard; I do not recollect of Judge Cardozo as one of the earliest.

Q. Are the provisions of the Code for the appointment of Receivers and for granting injunctions *ex parte* any more loose now under the present administration of the Court than they were during the period of time subsequent to the passage of the Code when such abuses did not exist in the Courts? A. I am not aware of any material alterations—I am not aware of any, in fact.

Q. Has not the change then been due not to the practice, but to the Judges? A. Yes, I think so.

Q. Is it not now as under the former system, and as under the system since the passage of the Code, when such abuses did not exist, is it not in the discretion of the Judge whether he shall grant an injunction or appoint a Receiver *ex parte* or upon notice? A. It is in his judicial discretion, but not in his arbitrary discretion; it remains as it did before.

Q. The law is the same as it always has been? A. Yes, sir; so I understand.

Mr. VAN COTT :

I produce from the files of the County Clerk the original complaint in the case of John Nyce against The Erie Railway Company and Messrs. Heath and Raphael; the original injunction order is attached to it, and the verification of the complaint by John Nyce, and an affidavit made by John Nyce in addition. This is endorsed: "Summons and complaint, affidavits and injunction," and the initials of Judge Barnard under that. Endorsed: "Filed April 18, 1870." Mr. Milard, when examined the other day, said that the original papers were on file. I call the attention of the Committee to the fact that the exhibit marked "Charge 3 B" is attached to the copy of the complaint, and a copy of the affidavit of John Nyce verifying the complaint, and a copy of the other affidavit produced from the files, and these are the only affidavits which appear in the papers. There was some question,

the other day, whether we had produced the affidavit on which the injunction was made. I call the attention of the Committee also to the fact that the verification of the complaint by the plaintiff is in the form which appeared to be devised in the office of Field & Shearman, and appearing in the verification in the Gould suit, to wit: "and except as to the matters stated to be." I also produce from the files of the County Clerk the original undertaking on allowing the injunction in the case of Nyce against The Erie Railway Company, dated 28th February, 1870, executed by the plaintiff, by A. B. Millard, plaintiff's attorney, and George Rowl, and that it is in the sum of \$1,000, endorsed, "approved as to its form, sufficiency, and the manner of the execution thereof. George G. Barnard, Justice."

EDWARD G. BLACK, a witness, called on behalf of the prosecution, sworn, and examined by Mr. PARSONS:

Q. How long have you been a lawyer practising in the city of New York? A. About seven years.

Q. Were you counsel for Samuel Samuels in a suit brought by him in the Supreme Court against the *Evening Post*? A. Yes, sir.

Q. Was the suit brought to recover damages for a claimed libel? A. Yes, sir.

Q. What defence was interposed by the newspaper? A. No defence interposed. They merely served notice of mitigating facts to be proven on the assessment of damages.

Q. Was a writ of inquiry then taken to a Sheriff's jury? A. Yes, sir.

Q. To assess damages? A. Yes, sir.

Q. When was that? A. The assessment was had on the 5th of December, 1870.

Q. And with what result? A. A verdict for the plaintiff of \$5,000.

Q. Who represented the *Evening Post*? A. Develin, Miller and Trull.

Q. Who is Mr. Develin, of that firm? A. John E. Develin, formerly Corporation counsel.

Q. Is Mr. Develin a prominent politician in New York? A. Yes, sir.

Q. And for how long has he been? A. As long as I can remember; a great many years past; I cannot fix any definite time?

Q. What are his personal relations with Judge Barnard? A. I should think they are very intimate from what I have seen. He calls Judge Barnard George, and Judge Barnard calls him John.

Q. Have you frequently seen him sitting on the Bench with Judge Barnard, while Judge Barnard has been holding Court? A. Yes, sir; laughing and joking with him.

Q. And frequently seen them in company together? A. I have, sir.

Q. What was the next step in the suit after the assessment of the damages? A. The attorneys for the defendant moved before Judge Ingraham for a stay of proceedings, and order to show cause why the first assessment should not be vacated, and a new assessment had.

Q. What order was made? A. An order was granted to that effect,

an order ordering us to show cause why the assessment should not be vacated and a stay in the meanwhile.

Q. Before what Judge did that motion come on to be heard? A. Judge Barnard was sitting at Chambers when the motion came on. It was returnable at Chambers.

Q. Was he regularly holding Chambers at the time? A. Judge Ingraham was appointed for that term, but Judge Barnard held this Court at this time.

Q. When did the motion come on to be heard before Judge Barnard? A. The order was returnable on the 19th.

Q. Of what month? A. 19th of December, 1870, the same month that the order to show cause was made in, and on that occasion Mr. Develin, prior to the calling of the calendar, had an interview with Judge Barnard on the Bench; what it resulted in I don't know; but he asked for an adjournment, which we granted, and it went off until the next day, and on the next day he again asked an adjournment. We attended on the day following, and waited some considerable time. Mr. Miller, his partner, being in Court. Mr. Miller had argued the matter before the Sheriff's jury on the assessment. Judge Barnard asked Mr. Miller if he was ready to go on, and Mr. Miller said he knew nothing about it; that Mr. Develin had the whole charge of it; that he was not there; and the Judge said he would wait a while. We waited about an hour and a half, I think, and then the Judge said we had better submit our papers, or we must submit our papers, and the other side said they had not theirs, but they would do so in a few days. We submitted ours then.

Q. On what day was that? A. On the 21st of December, I think.

Q. 1870? A. Yes, sir.

Q. What next occurred in the litigation? A. We waited for some considerable time, nearly a month, or over a month. We got an order from Judge Sutherland, to show cause why the stay of proceedings in the matter should not be set aside.

Q. In the meantime had there been any decision by Judge Barnard of the motion? A. No, sir; none at all.

Q. Do you know what Judge Barnard's practice is in deciding motions, whether he generally decides them at once, or generally retains the papers? A. Generally decides them at once.

Q. And how long did you wait without a decision before applying to Judge Sutherland? A. We waited for thirty days or more before applying to Judge Sutherland. I should say that the reason, as I ascertained from Judge Barnard, that he had not decided, was that the other side had not submitted their brief.

Q. Did you apply to Judge Barnard? A. I applied to ascertain whether the other side had submitted; he said they had not.

Q. And did you tell him that you wanted a decision? A. Yes, sir.

Q. That you wanted an early decision? A. Yes, sir; I told him that I wanted an early decision, and we got an order from Judge Sutherland requiring the other side to show cause why the stay of proceedings

should not be declared at an end, returnable, I think, on the 30th day of that following January.

Q. January, 1871? A. January, 1871. On the return day of that order we appeared, and Mr. Miller, of the firm; he said they were ready to submit their brief, that they had it then with them, that Judge Barnard was engaged holding General Term, and that they could not get at him to submit the papers, but at the first opportunity that they had, they should do so. I said I was going in to argue a cause before the General Term that morning, and that I would take the brief and consent to discontinue this matter if they would give it to me to hand to Judge Barnard. They said they would do so, and we endorsed an agreement of that kind upon the order to show cause.

Q. You then withdrew your motion? A. Withdrew the motion—yes, sir; I took the brief and went into the General Term room.

Q. Took their brief? A. Their brief—yes, sir; and went into the General Term room with it. The Court had not met. In looking it over I saw endorsed upon the brief in pencil, the words, "Delay won't be bad."

Q. Was that the brief they had prepared to submit to Judge Barnard? A. Yes, sir.

Q. And which they had placed in your hands to be handed to Judge Barnard? A. Yes, sir; I required it to be placed in my hands as a condition to dismissing the other motion. With an India rubber band which was placed about the papers, I rubbed off as effectually as I could the pencil words.

By Mr. ANDREWS:

Q. You rubbed them out? A. As well as I could.

Q. Before you gave it to Judge Barnard? A. Yes, sir; and I wrote over these words Judge Barnard's name, "Hon. George G. Barnard," I think.

By Mr. PARSONS:

Q. For the purpose of obscuring this endorsement? A. For the purpose of obscuring those words. I considered that it would be improper to go into the Judge's hands with those words upon it.

Q. How did they happen to give you a brief containing an endorsement of that kind? A. I cannot say; I suppose it was an oversight on their part, and they intended to hand the paper as a direction to Judge Barnard.

Mr. ANDREWS:

We don't want a supposition.

Q. Is there any other explanation which you can furnish? A. I cannot.

Q. Did you ever hand the paper to Judge Barnard? A. I handed it on that day, the 30th of January.

Q. 1871? A. 1871. And I waited a long time for a decision.

Q. Before you proceed to that—when prior to that time you urged a decision from Judge Barnard, and his response was that he had not

received the brief of the other side, what did he say as to when he would make his decision upon receiving the brief? A. I think his reply was simply that he had not received the brief. When he told me that, I did not press any further for a decision; I saw it was the fault of the other side.

Q. Had you previously pressed for a decision? A. I had asked him for a decision, and he told me then that was the difficulty.

Q. Now state whether, upon receiving the brief, Judge Barnard did decide the motion? A. No, sir; we waited a very considerable time, probably 60 days or more, and I then asked Judge Barnard whether he had not mislaid the papers in the case of *Samuels vs. Bryant*; that it was a long time since the motion had been made, and the papers submitted to him, and I supposed a decision would have been made before if he had not done so. He said no, that he was waiting to write an opinion, and he was busy, that he had not had time to write an opinion.

Q. Did he then decide the motion? A. No, sir.

Q. How long did he wait? A. On several other occasions following I again asked him for it, and he put me off.

Q. And down to what time did this continue, this effort on your part to obtain a decision without any further action on your part? A. On the 26th of July, 1871, I served defendant's attorneys with an affidavit and a notice of motion for the purpose of procuring that stay to be declared at an end.

Q. This was a stay of the entry of judgment by you, was it? A. Yes, sir; that the Code provided no stay should extend over 20 days, except on an appeal from an order or judgment.

Q. During this interval, down to the time that you made your motion, had you seen Mr. Develin with Judge Barnard, in the intimate manner in which you have stated? A. I think I had seen him two or three times with Judge Barnard, between the submitting of the papers and the time of my making this motion.

Q. What took place upon that motion? A. The motion was made for the first Monday of August. On the 12th of August, I think, Judge Sutherland heard the motion, and he then said that the decision of the motion had been unreasonably delayed.

Q. The decision of the motion to set aside the assessment of damages?

A. Yes, sir; for vacating the assessment of damages; that it had been unreasonably delayed, but that he thought it was proper for Judge Barnard to hear this matter, and that he would request Judge Barnard so to do, and he endorsed upon the paper which he returned to me—

Q. You mean the motion papers? A. The motion papers—yes, sir. "I request Judge Barnard to hear this motion. August 11, 1871. J. Sutherland."

Q. Was there an appearance for the defence upon the motion before Judge Sutherland? A. There was.

Q. An opposition? A. Opposition.

Q. What did you do upon receiving that memorandum from Judge Sutherland? A. I did nothing further, but in the *Tribune* of the 12th

of August a notice of this motion was published among other legal proceedings.

Q. Will you dictate it to the stenographers? A. "THE SAMUELS LIBEL CASE. A DILATORY JUDGE. Captain Samuels, of the yacht 'Dauntless,' recovered a verdict of \$5,000 against the owners of the *Evening Post* for a libel in December, 1870, and a motion was made yesterday, before Judge Sutherland, to declare a stay of proceedings, granted immediately after the verdict, at an end. It appeared from the statement of counsel that the defendants made a motion to set aside a verdict, which was heard last January before Judge Barnard, and has not yet been decided. Mr. Black, for the plaintiff, stated that Judge Barnard had been reminded of the case several times, but had not acted upon it. Judge Sutherland stated that he did not know what he could do in the matter, except to request Judge Barnard to hear the motion, and that he thought the motion ought to be decided."

Q. In what issue of the *Tribune* did that notice appear? A. On the 12th of August, 1871.

Q. What was the next thing to happen in the suit? A. On or about the 23d of August, I was served with an order in the action vacating the first assessment, and ordering a new trial, or a new assessment of damages.

By Mr. ANDREWS:

Q. Was that by Judge Barnard? A. Yes, sir.

Q. Was that Judge Barnard's decision of the motion which had been pending so long before him to vacate the assessment? A. That was his decision of the motion to vacate the assessment.

Q. Did he write an opinion? A. He wrote an opinion; after receiving the order, I went to Chambers to ascertain whether any opinion had been written; I got from the clerk the opinion, of which this is a copy.

Q. Read it to the stenographers. A. "Supreme Court Chambers, Samuel Samuels vs. William C. Bryant *et al.* Barnard, J. I had intended soon after the argument of this motion to have granted the application to set aside the assessment of damages; business of the Court of a more pressing character has thus far delayed me; I have been reminded of my remissness by an additional motion made by one Mr. Black, purporting to be the attorney for the plaintiff, for another Judge to decide the case for me; the Judge, if I have been rightly informed, remarked that the case should have been decided long before this; if that is so, it certainly is not proper for him to utter it, as he has cases before him undecided that were argued more than three years since; the object of this counsel in moving as he did, must have been to obtain by clamor or a suppression of truth, a decision that he was not entitled to; I intend now to put an end to his impatience by granting the motion; the inquest is set aside and the case restored to the calendar for trial before a Sheriff's jury; it is idle and foolish to sue an editor for a libel that he knew nothing

"about, and is willing to render any proper redress that a mistake calls for."

Q. While this motion was held by Judge Barnard, had you taken any other action in Court than to make the two motions of which you have spoken to vacate the stay of proceedings? A. Nothing but to set the stay of proceedings aside.

Q. Had you done anything which could be construed into an application to any other Judge to decide the motion held by Judge Barnard? A. Nothing other than I have told you, sir, of any kind.

Q. Had you, in any way communicated to Judge Barnard the motion made before Judge Sutherland? A. Not at all, sir; I understood he was out in the country.

Q. Do you know how he learned of that motion? A. I do not, sir; except as he says there, "I heard it."

Q. Did he hear it from you? A. No, sir.

Q. Or did he hear it in any proceeding before him as Judge? A. No, sir.

By Mr. NILES:

Q. Were you the attorney of record on the beginning of that suit? A. I was, sir; I initiated the proceedings.

Q. Had your being attorney been questioned by anybody? A. Not at all, sir, by anybody.

By Mr. PARSONS:

Q. Had there been any suppression of truth on your part, in respect to any proceeding? A. Never at all, sir.

Q. Had you asked for any other decision, than a decision by Judge Barnard, of the motion, which ever way he should see fit to decide it? A. Not at all, sir.

Q. In any proceeding before Judge Barnard, had there been any charge made against you of suppressing the truth? A. No, sir; I have no personal acquaintance with Judge Barnard of any kind.

Q. Did you take an appeal from Judge Barnard's order? A. I did, sir.

Q. Who composed the General Term when the appeal came on for argument? A. Judges Ingraham and Cardozo.

Q. Was Judge Barnard in the Court? A. I think not at that time.

Q. Was he one of the General Term Judges? A. I think he was not sitting on the Bench at that time; he was one of the members of the General Term, but he was not sitting on the Bench that day.

Q. In consequence of his disqualification by the fact that the motion had been heard before him? A. I suppose that was it.

Q. What did the General Term do? A. The General Term held the case under advisement, and Judge Cardozo wrote an opinion, which is appended there, entirely against the facts, as they appeared on the record.

Q. How long did the General Term hold the case before Judge Cardozo decided it? A. It was decided, I think, somewhere about the 20th, when the term ended. I think that was among the other opinions delivered at that time.

Cross-examination by Mr. ANDREWS.

Q. Why did you not put in an answer in this case? A. I was the plaintiff.

Q. You appeared for the plaintiff? A. Yes, sir.

Q. Mr. Develin appeared for the defendant, did he? A. Yes, sir; Develin, Miller & Trull.

Q. What was the title of the case? A. Samuel Samuels vs. William C. Bryant and Isaac Henderson.

Q. They are the proprietors of the *Evening Post*? A. They are, sir.

Q. No answer was put in to the case? A. No, sir.

Q. And you assessed the damages before a Sheriff's jury? A. We moved for judgment. They served us with a notice of mitigating facts to be proven before the Sheriff's jury. We moved for judgment, and took a writ of inquiry.

Q. Were those damages assessed by the Sheriff's jury? A. They were.

Q. Was there any one present appearing for the *Evening Post*? A. Mr. Charles E. Miller appeared to argue the case.

Q. The partner of Mr. Develin? A. The partner of Mr. Develin.

Q. And you obtained a judgment for \$5,000? A. We had a verdict for \$5,000. We have never got any judgment.

Q. You obtained a verdict from the Sheriff's jury of \$5,000? A. Yes, sir.

Q. Have you the libel that was complained of here? A. It is in this book.

Q. Is it lengthy? A. No, sir.

Q. Will you have the kindness to read it, and let the stenographers take it? A. "MYSTERIOUS DISAPPEARANCE OF CAPTAIN SAMUELS. *'The navigator of the 'Dauntless' believed to have committed suicide.* There is much excitement in Brooklyn to-day relative to the very mysterious and extraordinary disappearance of Captain Samuels, the navigator of the American yacht 'Dauntless.' It appears that about 10 o'clock last night, he proceeded to cross the East river with a number of friends. The entire party were considerably under the influence of liquor, it is said, and very boisterous. The captain was heard by a police officer to exclaim, 'Well, I lost the race, and now I don't care what becomes of me.' Other expressions of a like nature were heard from him by different persons. It seems that he had visited Grogan's and Force's, on High street, and many other drinking saloons and ale houses. At about two o'clock this morning, the captain was observed by a policeman lying upon the ground, at the corner of Fulton and Clinton streets. A number of his friends were standing around him, and he again exclaimed, 'No, no, it is no use, boys. I lost the race, so it don't matter where I go to.' The policeman did not arrest the captain or any of his friends. This morning a number of the captain's friends visited the *Eagle* and *Union* offices, the police stations and police headquarters,

"seeking anxiously for some tidings of him. They say that he was very despondent over the defeat of the 'Dauntless,' and express a fear that he might have committed suicide. From a conversation with one of the party, it was learned that Captain Samuels lost some \$30,000 on the race, and that since his arrival in New York he has been down-hearted and despondent. A large number of persons are now on the look-out for some information concerning him, but they have been thus far unsuccessful."

Q. Now, Mr. Black, did Mr. Samuels or yourself call upon the *Evening Post* and ask to have that corrected? A. No, sir.

Q. Never did? A. No, sir.

Q. Was any correction of it made in the *Evening Post*? A. They, in their mitigating facts, alleged that a retraction was made.

Q. Was that published? A. It was published, at least they say it was published. I cannot say from personal knowledge that it was published.

By Mr. CURTIS:

Q. Did they offer evidence of it before the Sheriff's jury? A. They did, sir.

Q. What conceivable motive could Mr. Bryant and Mr. Henderson, or Mr. Develin, their attorney, have for urging delay on this motion? A. I cannot give any other reason except that it was an action for tort, and that actions for tort die with the person.

Q. Then Mr. Bryant, if he had anything to do with it, calculated on his own death? A. On his own death; no.

Q. On the death of Samuels, I mean; and Mr. Develin must have calculated on it? A. Possibly they did.

Q. What is the age of Captain Samuels? A. I should judge he was a man in the neighborhood of fifty-five.

Q. And is he a man in the full vigor of health? A. I cannot tell you that; as far as outward appearances go, he is.

Q. Did you ever have any supposition that that delay was sought in any anticipation of the death of Captain Samuels? A. I presume that it must have been their only motive.

Q. Do you think that Mr. Bryant had any such idea in his head? A. I presume it was the attorneys' idea; I don't suppose Mr. Bryant was aware of the law.

Q. Do you suppose that the attorneys would take such a course as that unless their clients were communicated with about it? A. I think it is very possible.

Q. Would there be any motive for them to do it? A. I think there would be a very great motive—defeating the action.

Q. Defeating it, how? A. By allowing the death of the party.

Q. What would the attorney have to gain by defeating the action by the death of the party? A. I suppose a good round fee.

Q. Then you think Mr. Bryant would have paid him a good round fee if that event had happened? A. I think quite likely.

Q. Now this decision that was finally made in this case, was in your

favor, wasn't it? A. The verdict was in our favor, if that is what you speak of.

Q. And the motion to open the proceedings was granted by Judge Barnard? A. Yes, sir.

By Mr. NILES:

Q. That was against you? A. That was against us.

Q. Now, you made this application to Judge Sutherland, did you, in the case? A. To declare the stay of proceedings at an end; that was all—not to have the motion decided.

Q. And at that time you knew that that was not the custom of attorneys to make an application to another Judge where the matter was pending before one? A. No, sir; I did not know it; I don't know it yet.

Q. When the matter came up before Judge Sutherland, what did he say? A. Judge Sutherland said that he would prefer Judge Barnard should hear it; that he thought it ought to have been decided long ago, or words to that effect.

Q. Was that announcement made publicly in the Court-room? A. It was.

Q. And that arose from something that you said to Judge Sutherland about the case, did it not? A. I presume it arose from the fact of our making the motion.

Q. Didn't you see those remarks published in the paper? A. Do you refer to the article I speak of?

Q. I mean, didn't you see those remarks made by Judge Sutherland? A. I saw this article, and cut it from the paper myself.

Q. They were published in the paper; therefore they probably did come to Judge Barnard's notice by their appearing in the paper, did they not? A. I think it very probable.

Q. Now you had made a good many severe remarks about Judge Barnard, hadn't you? A. None at all that I am aware of.

Q. None whatever? A. No, sir.

Q. No criticism upon his course? A. To whom do you mean?

Q. To any one? A. I may have said that I thought that the Judge had got a pocket veto.

Q. Didn't you say that? A. I think I did; I probably told my client that.

Q. That he had got a pocket veto? A. Yes, sir.

Q. Did you tell anybody else that? A. I don't think I did; I may have done so.

Q. Did you say anything to Mr. Develin, or to Mr. Miller, in regard to the delay? A. I did not, one word.

Q. What were those words that you say were written on the back of the paper? A. "Delay won't be bad."

Q. In pencil mark? A. Yes, sir.

Q. In whose handwriting was that? A. I cannot swear to the handwriting.

Q. On what paper was it? A. On the brief that was submitted to the Judge by me; handed to me by Mr. Miller.

Q. (By Mr. PARSONS :) You mean Mr. Miller's brief? A. Mr. Miller's brief—the defendants' brief.

Q. You rubbed that out, did you? A. As well as I could, I did; I only had an India rubber band.

Q. Do you think that there is any of that writing on the paper? A. I think it quite probable that you could still read underneath the ink.

Q. And you wrote what? A. As near as I can recollect, "Hon. Geo. G. Barnard."

Q. Therefore the pencil marks never came to Judge Barnard at all? A. I don't know that they did not; I didn't say "therefore," at all.

Q. You say you rubbed it out? A. I said I rubbed it out as well as I could; but I think that the impress of the pencil—the weight borne upon the pencil, remained upon the paper, notwithstanding my effort.

Q. So that you think by a glass, or some magnifying instrument, he might see it? A. I think with a fair pair of eyes it is possible.

Q. Do you think he could see it notwithstanding the name you wrote over it, in ink? A. I think it is quite possible; I won't say that he could, and I won't say that it ever came to Judge Barnard's notice.

Direct examination by Mr. PARSONS :

Q. Is there any doubt that Mr. Develin did want delay in the decision of that motion? A. I have no doubt about it in my mind.

Q. Isn't it quite obvious from the endorsement on the brief? A. Yes, sir; I will say further, that in serving the answer they procured extended stays before they served me with any papers; they delayed serving any papers on me after the first pleadings were served on them, for a long time; as long as I would give them time.

Q. Without any regard to the contingency of Captain Samuels' death, was not the delay injurious to, and very much against his wish? A. Yes, sir; he was constantly urging me; wanting to know why I did not proceed.

Q. And did not the defendants' attorney know of your anxiety to have the decision, that you might proceed to enter your judgment? A. They did, sir, from the fact that I served them with a notice to declare the stay at an end.

Q. You were asked whether you did not know of the practice, where a matter was pending before one Judge, when a motion was made in the same matter, to move it before the same Judge. Was the motion made by you to Judge Southerland the same as the motion which had been made to Judge Barnard? A. No, sir; the motion made to Judge Barnard was for a vacation of the assessment of damages, and an order for a new assessment. That was made by the other side. The motion I made was to declare the stay of proceedings at an end, preventing my entering judgment, so that in case the plaintiff died we would have a judgment.

Q. Is there any practice which requires such a motion to be made before the same Judge before whom is pending the other motion? A. None that I know of.

Q. Do you not know that there is no such practice? A. I know that there is not.

A. A. Low, a witness called on behalf of the prosecution, sworn, and examined by Mr. VAN COTT:

Q. Are you a merchant engaged in business in the city of New York? A. Yes, sir.

Q. How many years have you been in business in this city? A. Since 1840—about thirty years.

Q. Have you been connected with various commercial and financial institutions in this city within that period? A. With several.

Q. Will you please name them? A. I have been connected with the National Bank of Commerce; Delaware and Hudson Canal Co.; Chesapeake and Ohio Railroad Co., and others of lesser importance; many incorporated companies, insurance and others.

Q. You have been Director of these various institutions? A. I have.

Q. For how many years have you been a member of the Chamber of Commerce? A. I am unable to say directly, but upwards of twenty years.

Q. For how long a time were you President of the Chamber of Commerce? A. About four years—from 1863 to the close of 1866, when I resigned.

Q. Have you during that time paid more or less attention to the course of public events and affairs? A. Such as every man in business does.

Q. Have you had your attention drawn to abuses, or alleged abuses, in the administration of justice in the city of New York? A. Necessarily so in reading the papers and magazines, and conversation, and otherwise, as every man has.

Q. Has your acquaintance with business men, men largely engaged in commerce and largely connected with financial affairs in the city, been extensive? A. My own immediate business is with China, and I am interested in various corporate institutions, Director in those that I have named.

Q. Is there any common opinion among commercial and financial men in New York in respect to the manner in which justice has been administered in the city of New York for some years past? A. I believe so.

Q. What is that opinion, sir? A. I think it is adverse to the character of the Courts of the city, certainly.

Q. Have you heard the names of any particular Judges spoken of in that connection? A. Often.

Q. Will you please mention their names? A. When I left my office yesterday to come here, I said to an elderly gentleman that I was coming up here to bear evidence before this Committee, and asked what he thought of the Courts of the city. He pronounced a very unfavorable opinion.

Mr. CURTIS:

Excuse me one moment.

Mr. PRINCE:

What we want is the general opinion.

The WITNESS:

I asked him his opinion, and it was unfavorable to the character of the Courts. I said, "Could you specify any particular Judges?" He said, "Judge Barnard and Judge Cardozo. Such, I believe, is every man's opinion; such is my own opinion; I think it is almost every man's opinion." I asked him if he were called upon to single out any Judges that were particularly open to public censure, what his opinion would be, and his reply was, "I should go straight to Judge Barnard and Judge Cardozo," and then I added that that would be almost every man's opinion, and it was my own.

Q. And that is the current opinion, in your own judgment? A. I believe it is the general opinion; I believe it is almost as common as the air we breathe.

Q. What effect has this opinion upon the sense of security or insecurity of men engaged in large business? A. I think it is very detrimental to all interests.

Q. What effect, in your judgment, has this opinion upon American credit, and upon the value of American securities? A. It is easily illustrated; we have seen, within a few days, a single security advance in price to the extent of twelve millions of dollars, owing mainly to a change of Directors; good men are supposed to have taken the place of bad men. The bad men I believe were, by the common judgment of the community, sustained in power by the Courts, and when they were displaced, then there was a rise in a single security of twelve millions of dollars, I think within a single week, and that illustrates the effect of the retention of bad men in place, and perhaps it is the more pertinent in this case because parties in Europe are closely allied with parties here, producing the change.

Q. You have been abroad, in Europe, on several occasions? A. Yes, sir; many times.

Q. And have you had occasion when abroad, to converse with commercial and financial men there about the state of things in this country? A. Not very much. Where I have been it has been generally in pursuit of recreation. My visits have not brought me much into contact with financial men.

Q. Are you able, from your intercourse with gentlemen abroad, to state what is the prevailing feeling, say in England, about the security of property in this city, and about the manner in which justice has been administered in this city? A. In a general way. I should say that the sentiment which is so prevalent here is reflected there, and obtains almost, if not quite as largely, there as here. Commercial countries are brought now so intimately in connection with each other that what is the sentiment here, must necessarily prevail in other lands,

because other countries are so closely united to our own; the merchants of other countries being represented by their partners and agents here; so that whatever is the general opinion here, must prevail abroad.

Q. What, in your judgment, would be the effect of that state of opinion upon the attraction to, or repulsion from this city, of capital, and of large enterprises in which capital is employed? A. Wherever there is distrust, either of the courts, or of other institutions, the effect, of course, must be extremely prejudicial; it must lessen the value of all securities; their standing must depend upon the standing of the Courts..

Q. I ask you the general effect of this state of opinion, in your judgment, upon the commercial prosperity of the city of New York? A. I think it is prejudicial, damaging, unquestionably.

Q. And what effect does an injury to the commercial prosperity of New York, in that connection, have upon the country at large? A. Indirectly it extends to all the great interests of the country; New York being the great centre of the monied interests of the country, of course gives more or less tone to the whole country, and anything that effects the character of this great city must influence, more or less, the character of all the cities of the country.

Cross-examination by Mr. CURTIS:

Q. Has there not prevailed generally, here at home, an opinion that the Legislature of New York is corrupt? A. I think there has.

Q. And has there not been a similar opinion prevalent in regard to the Federal Government? A. I should think not so general.

Q. Not so general? Has there been to some considerable extent such an opinion? A. I think the corrupt influences of money are supposed to extend to many of our legislative bodies.

Q. I speak now of the opinion here among the class of men with whom you are concerned and associated, whose opinions you have opportunity to know; what has been the opinion with regard to the purity or corruption with which the New York Custom-House has been administered in some years back? A. Well, I think the general opinion is these malign influences have extended to the New York Custom-House.

Q. Is there not a general prevailing opinion that is unfavorable, to use your expression, to the Custom-House authorities? A. I hardly know how to answer your question. Will you repeat the question?

Q. I did not mean to ask you in regard to any particular individuals, but to the general administration of the Custom-House; is there not an unfavorable opinion as to its purity, honesty and fairness? A. In the general administration I think so. There are many wrongs traceable to the administration of the Custom-House, that is, through its interior departments; I don't know that it applies to heads of departments. Individually, I am not brought into connection with the Custom-House business at all; it is transacted by my partners; but in answer to your question, I think such is the general opinion.

Q. Do you know yourself, of any specific act done by Judge Barnard, which justifies or calls for this unfavorable opinion that you say is entertained of his judicial character? A. I cannot say that I know it personally, because I do not pretend to understand the rulings of Courts; I only speak of the general opinion resulting from what we read and hear.

Q. In the course of hearing the expressions of that general opinion, have you ever heard anybody accuse Judge Barnard of pecuniary corruption? A. I don't know that I have ever heard of any instance where money has been paid to Judge Barnard.

Q. Never have heard any such instance assigned in conversation? A. I don't think I ever heard any one attribute the payment of money to Judge Barnard or Judge Cardozo, in any instance.

Q. You spoke of the sentiment which prevails here being reflected abroad, or from abroad? A. Yes, sir.

Q. Now, supposing this unfavorable sentiment to originate here, is it not traceable in a very considerable degree to statements and imputations made in our public newspapers? A. I think it is largely traceable to what appears in our papers; they are the medium through which we get our knowledge of what is transpiring; all reports of decisions, and the history of everything, appears in our papers, and we all have recourse to them, and doubtless form our judgments from what we read; we do in regard to good men and bad men alike.

Q. You spoke of the late change in the management of the Erie Railroad Company. I understood you to say that the late managers, who had recently been turned out, were sustained in office by the Courts, or were understood to be sustained in office by the Courts. Do you know of any proceeding in which Fisk and Gould, and their associates in the management of the Erie Railway, have been sustained in office by any decision, of a Court in this city, involving the question of whether they should or should not retain their offices? A. I spoke of the general judgment, and my own concurring, without pretending to understand points of law; I believe that is the general opinion resulting from all that we read and hear of what has taken place in the Courts.

Q. I will bring my question to your attention a little more specifically, if you please. I want to know if you are aware of, or have ever known or understood that any question involving the retention of their offices by those men, has ever come before our Courts, and been decided by the Courts in their favor, so as to keep them in office? A. I have understood that to be the case.

Q. You have understood it to be the case? A. I have so understood it; I don't pretend to judge of legal matters; I am not versed in law.

Q. I don't ask you whether the decision was right or wrong. I ask you whether you know whether there ever has been such a decision? A. I have seen those men before the Courts of Justice for years, and I have seen them retained in their places.

Q. You don't know whether that has been in consequence of any decision on the direct question, by the Courts, do you? A. I suppose it was, because it was impossible through our Courts of Law to remove them; I have understood it to be so; efforts have been made to remove them because they are supposed to be flagrant violators of the law, believed to be bad men, and doing a great injury to other men, and yet I have seen them sustained in all the suits at law which have come to my notice; therefore I suppose it was through the decision of the Courts that they were maintained in their position.

Q. You are not aware, are you, that there has ever been any decision of the Court involving the direct question of whether they should be retained in office, or expelled from office? A. I have read the proceedings of the Courts, such as they have been; I have seen them sustained, and kept in their office.

Q. Permit me to ask you what you mean by being sustained and kept in their office. Do you mean that they have been sustained in the litigations that they had before the Court? A. I mean, in all these litigations, I have seen them kept in their office, prolonged by the Legislature also.

Q. Now, is it not a fact that an act of the Legislature was passed some time ago, commonly called the Classification Act, which, by its operation, kept those men in the position in which they were; is not that the truth? A. So far as the law of the Legislature goes, certainly.

Q. Do you know whether that law, either in respect to its validity, or its operation, has ever come before the Courts, and been decided in favor of Fisk and Gould? A. The validity of the law, do I understand you?

Q. Yes; or in respect to its bearing in any way on the question of whether those men should retain their places, or be obliged to give them up? A. I don't know that it has. I have read what has transpired in the Courts from time to time, and what has been published in the magazines.

Q. Then your idea of their being sustained in office by the Courts, is this impression as it lies in your mind, if I understand it, that the litigations which they have had have apparently been decided generally in their favor; is that it? A. I mean that; that in all the litigations which have taken place, the Courts have seemed to be upon their side.

Re-direct examination by Mr. VAN COTT:

Q. I did not understand you to express the opinion, or to state it as the opinion prevailing in the city, that all the Judges of the Courts of New York were corrupt men? A. No.

Q. And I do not understand you to express the opinion for yourself, or that it is the prevalent opinion of the city, that all members of past Legislatures have been corrupt? No.

Q. Then is the opinion both as to the Judges and to members of the Legislature any more than this, that some of the Judges and

some members of the Legislature have been corrupt? A. That is what I intended to say; that the general character of the judiciary had suffered through individual members; I don't mean to say that the adverse judgment is limited to two Judges. I meant to say that two would be named before any others.

Q. Do you not understand that a majority of the capital stock of the Erie Railroad Company was held by foreign owners? A. It was held largely abroad.

Q. Have you not also understood, hearing of the course of litigation in this city, that injunctions had been obtained, preventing the holders of such foreign stock, or their representatives, from having it transferred to their names, so that they could vote upon the stock in elections for Directors for the Erie Railroad Company? A. Yes, sir.

Q. Have you not also understood that large amounts of that stock, belonging to foreign owners, have been seized by receivers of the Court, and instead of being voted upon by the owners of the stock, and according to their views, have been voted upon by the receiver according to the views of Fisk and Gould in the administration of the Company? A. I have so understood.

Q. And the opinion that you have referred to has in some measure, in your judgment, had relation to these proceedings of the Courts, thus interfering between the management of the company and the owners of the stock of the company? A. How is that?

Q. The opinion that you have expressed as prevailing with reference to the Courts, you understand to be in some measure founded upon the fact of this interference of the Courts against the stockholders, and in favor of the managers of the Erie Railroad Company? A. Certainly, yes, sir.

Q. And is that what you meant by the action of the Courts in retaining Fisk and Gould, and that class of men, in office as managers? A. I meant that; that they have been sustained in what I would call their evil course, and these various acts, which I would regard as so prejudicial to the stockholders, and indirectly, so damaging to the general interests of the country.

ADOLPHE LEVINGER, a witness called on behalf of the prosecution, sworn, and examined by Mr. PARSONS:

Q. How long have you been an attorney-at-law, practising in the city of New York? A. Thirteen years; since 1858.

Q. Did you have occasion recently, on behalf of any client, to apply to Judge Barnard for an order of injunction? A. I did.

Q. In what suit? A. It was in the suit of *Steinhart vs. Funk*.

By Mr. CURTIS:

Q. Who were the plaintiff's attorneys? A. I was for the plaintiff, that is, our firm was.

Q. When did you make your application to Judge Barnard? A. Mr. Townsend did it, my partner, but I was with him; we made it together on the 12th of February, 1872.

Q. What papers did you present to Judge Barnard upon which to obtain from him the injunction order you desired? A. The papers in your hands now.

Q. The summons, complaint, affidavit verifying the complaint, and special affidavit of Ephraim R. Steinhart, sworn February 12, 1872, before Chas. Blandy, Notary Public? A. Yes, sir; and the usual undertaking, which is not here.

Q. State, if you please, what occurred on the occasion of your presenting these papers to Judge Barnard; where was he, and what was said by Mr. Townsend, and what by him? A. Judge Barnard was sitting on the Bench. Mr. Townsend handed up those papers.

By Mr. CURTIS:

Q. Chambers, was it? A. At Chambers, yes, sir. Mr. Townsend handed up the papers, and Judge Barnard asked him, "What is it?" Mr. Townsend said, "We apply for an injunction to restrain the foreclosure of a chattel mortgage." Judge Barnard immediately interrupted him, and said, "I would not grant such an injunction." Mr. Townsend said it was a peculiar case; the defendants sought to foreclose a chattel mortgage which was not on file, and did not exist at the time that the plaintiff bought the goods. The plaintiff bought them in perfect good faith, not knowing of the mortgage; the mortgage was filed at least a month afterwards, and stated that the defendant had a Deputy Sheriff and another man there trying to take away the goods.

Q. Did those facts appear by the papers? A. They are in the papers. Judge Barnard said, "You needn't talk any more; I would not grant it. If a man wants to foreclose a chattel mortgage that does not exist, kick him out—get somebody to kick him out." Mr. Townsend wanted to say something more; Judge Barnard told him, "There is no use talking; if you would stay here all the morning I would not give you the injunction." Whereupon we left.

Q. Did Judge Barnard subsequently grant that same injunction order? A. He did.

Q. Did he grant it upon precisely the same papers as those upon which you made application to him? A. Exactly the same papers.

Q. State how it happened that, having refused your application, he did subsequently, upon the same papers, grant an application for the same injunction order? A. I don't know how it happened.

Q. State so much of the transaction as came within your knowledge? A. The plaintiff in the suit, Mr. Steinhart, was with us. He heard the whole conversation between Mr. Townsend and Judge Barnard. I turned around and told him that we were very busy just now; we had a case on trial in the Common Pleas, and had to go there; that I could not for the life of me see why Judge Barnard refused to grant that injunction; it was a proper one.

Q. A proper case for one? A. A proper case for one, and the only thing I could do for him was to go to the office at three o'clock and draw up other papers to present to a Judge of another court, and to

bring the sureties again, so as to draw an undertaking in another court. He told me that was not necessary. Says he, "I will get this injunction." I laughed at him and told him: "How do you expect to get an injunction signed by the Judge after he refused us?" "Well," says he, "that is none of your business how I get it; you give me the papers and I will get it." I remonstrated with him, and told him I hardly thought the thing was proper; then he says: "You can't get it before three o'clock this afternoon. I want that injunction. You give me the papers, and it is none of your business how I get it signed." I gave him the papers; he came at one o'clock to the Common Pleas, where I was trying a case, and told me it was all right; that it would be signed at two o'clock. I told him I had nothing to do with it; if he got it signed it was his own business. I did not see him again that day.

By MR. CURTIS:

Q. Do you say he came to the Common Pleas at one o'clock? A. In the room where I was trying my case; he said it was all right; it would be signed at two o'clock. It was immaterial to me, I told him; as long as he took the papers and the responsibility he could do as he liked. He came again the next morning at 10 o'clock and brought the injunction signed.

Q. By Judge Barnard? A. By Judge Barnard.

Q. Is the injunction entitled in the suit and dated Feb. 12th, 1872, which you have produced under your subpoena, the injunction order to which you refer, and is the signature "Geo G. Barnard" to it in the handwriting of Judge Barnard? A. Yes, sir.

Q. Have you since ascertained who procured that injunction order from Judge Barnard? A. Not excepting the statement of my client.

Q. And who, so far as he stated, did procure the order from Judge Barnard? A. I don't think I can answer; I promised him not to reveal it.

Mr. PARSONS:

I think the Committee will relieve Mr. Levinger from any such obligation.

Mr. FLAMMER:

Where is your client?

The WITNESS:

He is at Irving Hall; he is the proprietor of Irving Hall; it appears upon the papers.

Mr. PRINCE:

I don't see why we cannot call Mr. Steinhart.

The WITNESS:

I would rather not answer; I promised him not to tell.

Mr. PRINCE :

The Committee would like to get through with it, and ascertain the facts, but so long as there seems to be a way to get at it without troubling the present witness until the ground has been tried, and failed, I would respect his feelings.

Mr. PARSONS :

In the event of the inability to obtain Mr. Steinhart he must come again.

The WITNESS :

If you subpoena me to come, I should claim the same privilege again.

Mr. PRINCE :

In that case we should have to insist.

The WITNESS :

When the time comes we will see.

Q. Those papers do not appear to be separated, do they, since you first put them together? A. They are the same papers.

Q. You recognize the papers? A. They are in my handwriting.

Cross-examination by Mr. CURTIS :

Q. I understood you was present when your partner made the application for an injunction? A. Yes, sir.

Q. Throughout? A. Throughout.

Q. You heard all that was said? A. Every word.

Q. Did Judge Barnard assign any other reason for not granting the injunction than what you have given? A. None whatever.

Q. And that reason was that you did not need such a remedy? A. He said, "You don't need such a remedy; if the man attempts to foreclose a mortgage which he has not got, you kick him out." We remonstrated. Mr. Townsend said that he had not the physical ability to turn out two men, and he thought we were entitled to the injunction; and he said it was no use talking all day; says he, "I won't grant you the injunction."

Q. You haven't any reason to suppose that Judge Barnard was actuated by any personal hostility to you or your partner, have you? A. No, sir.

Q. Or any disinclination to gratify you or your partner? A. No; I believe it is his manner of not listening to counsel when he does not feel inclined. If he had listened to us, I am sure he would have granted the injunction.

Q. Was there a press of business before him at that time or not? A. No; none at all.

Q. What else was going on at that time? A. It was the usual Chamber business, but there was not over three orders there—two or three papers, perhaps, after ours.

Q. The calendar waiting to be called? A. No; it was early; it was half past ten before we went to the Common Pleas.

Q. Was this the first thing in the morning, on the commencement of business? A. No; there must have been some business done before; I saw a good many lawyers going out with their orders. It was a quarter to eleven, I might say. We intended to get this application first, and try our case in Common Pleas.

Q. How do you know that the papers on which Judge Barnard subsequently granted the injunction, were the same papers that you presented to him in the morning? A. They were my papers; they were drawn by me, which Mr. Townsend and I handed up to Judge Barnard, and which I then handed to my client, and which he brought back the next morning.

Q. What Mr. Townsend is that? A. Mr. M. L. Townsend. They are here, the same papers.

Q. I see that these papers are here, and that they were drawn by you. Now, do you know that Mr. Steinhart did not add any other papers to those? A. Yes, sir; I do.

Q. How do you know? A. Because he returned them to me.

Q. He returned those papers to you? A. Yes, sir.

Q. How do you know that he did not introduce along with those papers that he returned to you, or have somebody introduce, before Judge Barnard, other and further proof? A. It is not possible.

Q. Why isn't it? A. Of course, they were left for us, and to serve on the defendant.

Q. How? A. If he had other papers, they would be bound to give them to us.

Q. You only infer from the fact that he brought you back the papers that you handed to him, that he did not make use of any other papers; is that it? A. Of course; he brought them back to us for the purpose of being copied, and to serve on the defendant. If any other papers had been offered to Judge Barnard, they would have been returned so as to be served on the defendant.

Q. That is the only reason, is it, that satisfies your mind that he did not use any other papers? A. Undoubtedly; because the defendant would be entitled to them.

By Mr. FLAMMER:

Q. Was Judge Barnard engaged at all on the presentation of this motion? A. No; he heard the statement of Mr. Townsend. Mr. Townsend went as far as "chattel mortgage," and he interrupted him, and said he would not grant any motion to restrain the foreclosure of a chattel mortgage.

Q. Did Mr. Townsend state what papers he had? A. Mr. Townsend told him "I would like your Honor to look at the papers."

By Mr. PRINCE:

Q. Look at the order, and state if that order does not state on what papers it was made? A. Yes, sir; the order is, "It appearing satis-

factorily to me, by the complaint of the plaintiff, and the affidavit of said plaintiff, that sufficient ground exists—”

Q. That is enough.

By Mr. VAN COTT:

Q. And these are the complaint and affidavit of the plaintiff? A. Certainly.

By Mr. CURTIS:

Q. Judge Barnard did read them, I understand you? A. No, sir; he immediately interrupted him after Mr. Townsend said it was an application for an injunction to restrain the foreclosure of a chattel mortgage.

Q. Which had not been recorded? A. He did not listen so far. When Mr. Townsend said the words “chattel mortgage,” he said, “I won’t grant any such injunction,” and Mr. Townsend said, “I wish your Honor to look at the papers. It is a peculiar case; the defendant here seeks to foreclose a chattel mortgage which was not filed, and did not exist at the time the plaintiff bought the goods, and the plaintiff is now in possession of those goods.” He said, “Very well, if he tried to foreclose a chattel mortgage which did not exist, kick him out.”

Q. Judge Barnard neither read the papers or heard them read? A. No, sir.

By Mr. PARSONS:

Q. He refused to do so, did he not? A. He refused to do so at the request of Mr. Townsend. Mr. Townsend used those words, “I wish your Honor to read those papers.”

Q. That is what he was pressing him to do, to read the papers? A. Yes, sir.

Q. And he declined to do it? A. Yes, sir.

Q. Saying he would not grant an injunction to restrain the foreclosure of a chattel mortgage? A. Yes, sir; Mr. Townsend urged it again, and he said, “It is no use your urging it any more; you may talk all the morning, and I won’t grant it.”

Mr. PRINCE:

Have you Mr. Steinhart’s address? A. Irving Hall; he is, by the papers, proprietor of Irving Hall.

DOUGLAS TAYLOR, a witness, called on behalf of the prosecution, sworn, examined by Mr. PARSONS:

Q. Have you been somewhat active in political matters in the city of New York for some time past? A. Very much so.

Q. For how long? A. Twenty-two years.

Q. Do you know Judge Barnard? A. Quite well.

Q. How long have you been acquainted with him? A. Since he ran for Recorder, which I think was twelve years ago, or fourteen years ago.

A. Have you been associated with him in politics? A. To a moderate extent. Yes, sir; we have been connected with the same party formerly.

A. Do you remember a suit that was brought by John Scott against the Society of Tammany or the Columbian Order in the city of New York, in which Judge Barnard granted an injunction, on or about January 11th, 1872, restraining the Board of Sachems from interfering with or preventing any of the corporators of the Tammany Society from meeting in Tammany Hall? A. Yes, sir.

Q. Were you, at the time that injunction order was granted, a member of the Tammany Society? A. Yes, sir.

Q. For what length of time had you been a member of that society? A. About twenty years, I think. Since 1851 or '52; I forget which.

Q. Was the motion to continue that injunction upon the return of the order to show cause opposed by the Tammany Society? A. Opposed by the Sachems. It was the Sachems whom the injunction was leveled against, on the part of one of the members, who claimed that the Sachems, acting as they do in the capacity of Trustees, had prevented certain members, including himself, from having certain rights, for which they asked relief from the Court. I, as one of the Sachems or Trustees of the Society, was familiar with the facts, and was very active in relation to it.

A. In opposing the injunction? A. In opposing the injunction, I was very active in the body of which I was a member, namely, the Board of Sachems, equivalent to the Board of Directors or Trustees, of any other institution.

Q. Is the corporation the Society of Tammany, or the Columbian Order? A. That is the name of the corporation.

Q. Was that corporation created by an act of the Legislature of the State of New York, passed in the year 1805? A. It was created by that; the corporation was created by that, not the society.

Q. That is what I asked, whether the corporation was? A. Exactly, the corporation was created by that act, not the society itself, which was anterior to that.

Q. Is the corporation possessed of any property—does it own the Tammany Hall property? A. It owns the Tammany Hall property.

Q. And do the Board of Sachems occupy the relation to the society of Directors to an ordinary corporation? A. Precisely.

Q. They are the governing body of the corporation? A. Entirely.

Q. Mr. John Scott claimed to be a member of the Tammany Society? A. Yes, sir; he was a member, and as a member he solicited this injunction.

Q. Had the Board of Sachems passed the resolution prohibiting the use of Tammany Hall, and prohibiting its use by whom? A. Not by the corporation; the whole question was on error; Mr. Scott was a corporator of Tammany Society, a member, and claimed erroneously that he was shut out; he was not shut out as a corporator; he was shut out as a member of a society, a distinct body, namely, a body called the Democratic General Committee, and which had no-

thing to do with the Tammany Society ; Mr. Scott, in his application, which was a fraudulent and erroneous one, requested that he, as a corporator of the Tammany Society, might not be shut out ; the fact being that he was shut out as a member of a society, a distinct organization and body, not as a corporator of the Tammany Society ; consequently the injunction on its face was absurd, and inconsequential and irrelevant ; it had nothing to do with the facts of the case, as regards the closing of the Hall by us, the Sachems.

Q. Is the Democratic General Committee of which you speak, the General Committee known ordinarily as the Tammany Hall General Committee ? A. As the Tammany Committee, yes, sir.

Q. Who was the Chairman of the Tammany Hall General Committee ? A. The Chairman of the previous one was Mr. Tweed ; the Chairman of this one I don't know ; I believe Mr. Waltman is ; I am not certain.

Q. When did the change take place in the organization of the Tammany Hall General Committee ? A. At the end of the year the change purported to take place.

Q. At the end of the year 1871 ? A. Yes, sir.

Q. Then Mr. Tweed was unseated ? A. Mr. Tweed's committee died out of necessity.

Q. And he was not a member of the new committee ? A. I think not, sir ; whether he was or not, we Sachems wanted to shut the whole concern out, and we closed the doors against Mr. Tweed and his successors, whoever they might be.

Q. Was that due to the Reform action of the preceding few months ? A. Not entirely.

Q. And to the action charged against Mr. Tweed and other city officials, which has been before the Courts recently ? A. The seven Sachems, of which I have the honor of being one, most unmistakably shut the doors in consequence of the fact that a number of gentlemen connected with the former organization had been found, or were supposed to be found, to be corrupt, and they didn't choose to allow such a party any companionship with them ; I speak very freely, for I started the movement.

Q. And among those gentlemen were Mr. Wm. M. Tweed, and others associated with him ? A. Well, as a matter of inference, it must be that ; I am not aware exactly for what purpose, or in what shape, you desire to have this suggestion answered.

Q. We desire to get the situation upon which Mr. Scott made his application ? A. It was with a view of closing out any person who might be connected with that General Committee that the Sachems closed the door.

Q. You mean the General Committee which terminated its existence on January 1st, 1872 ? A. Yes, sir ; we preferred not having a succession to them made up of any of the same material, and in case there was to be a succession, of allowing them to come from a different class of persons ; we considered ourselves acting as reformers, in one sense of the word, unquestionably ; we wanted to reform our own organization.

Q. Did you make an affidavit, upon which to oppose the continuance of Judge Barnard's injunction? A. Yes, sir.

Q. Is that affidavit in evidence on this proceeding, marked "Charge 8 O.?" (Showing witness the document.) A. Yes, sir; this is the affidavit.

Q. Is it the fact that Judge Barnard was a member of the Tammany Society, and a corporator of that corporation, at the time he granted that injunction? A. Unquestionably, sir.

Q. For what length of time had he been a member of the Tammany Society, and a corporator of that corporation? A. Judge Barnard had been initiated, and I being more familiar than others as to the membership, knew that he had been, very few members knowing that he had been, as I believe he never attended, some eight or ten years, I should think.

Q. Continuously down to the time that he granted that injunction? A. He had been initiated.

Q. Had he been a member? A. A man is always a member, according to the rules of the Society, who is once initiated, even if he never attends again.

Q. Unless he resigns? A. Unless he resigns.

Q. He never had resigned? A. His resignation had never been acted upon, if he had, at all events; I am not aware that he knew that he was a member, but I am aware that I knew he was.

Q. Had he ever attempted to resign, so far as you know? A. I believe not; he never had attempted to do anything about it.

Q. Would you know if there had been any tender of any resignation by him? A. Yes, sir, as a Sachem, and from the fact that no one ever resigns there; such instances have been comparatively rare; I never heard of such a case.

Mr. ANDREWS:

He says he don't know that Judge Barnard knew whether he was a member.

WITNESS:

I say he was such a poor member, that he may not, perhaps, have known anything about it; if you will allow me to explain, I will do so.

Q. If you desire to, explain. A. I was going to Havana for my health, and the lawyer in this case, Mr. Vanderpoel, suggested that the surest way of attaining a vacation of the injunction would be a simple statement that the Judge who granted the injunction was in the same relation in the society as the person who asked for the injunction; upon which Mr. Vanderpoel and myself drew this up as briefly as possible, and it was done as the most expeditious way of procuring from another Judge, not a member, the vacation of the injunction; that was the motive for making the affidavit and for my signing it as a Sachem, and as a Sachem familiar with the names of every member of the society; being the oldest Sachem of the Tammany Society, I have given more care to it than anybody else.

Q. Was the change in the management of Tammany Hall, and in the organization of the General Committee, a subject of notoriety, mentioned in the newspapers, and generally known throughout the city of New York at the time? A. Yes, sir; the question was agitated extensively, but the motive and manner was misunderstood as most matters of that kind are by the press.

Q. I merely refer to the fact of the change. A. The change as to what?

Q. In the organization of the General Committee? A. Yes, sir; it was very general.

Q. And it was upon that change, as I understand, that took place, the action of the Sachems, with a view of preventing the use of Tammany Hall by those opposed to the Reform movement? A. By those not in accordance with their views in reform.

Cross-examined by Mr. CURTIS:

Q. Do you know of any political motive of any kind, that Judge Barnard could have had for acting one way or the other in this matter in his judicial capacity. A. No, sir; none whatever. I think he did it out of mere inconsiderateness, and from the fact that the application was such as from reading and on examination any Judge must have granted under the affidavit made by Mr. Scott.

Q. What are understood to be by you and others in this organization or re-organization of the Democratic party as having its headquarters at Tammany Hall—what are understood to be Judge Barnard's sentiment; is he opposed to or is he in favor of the reforms or re-organization within the party? A. Well, sir, I know very little about it. I have never talked with him on the subject. We took it for granted, from his action in this matter, that he might have some feeling. I spoke to him a day or two afterwards, and found that he had none. I found fault with him personally for granting the injunction, and asked him if he knew that he was a member, and he did not know whether he was a member, from which I say that I think he was entirely guiltless of any recklessness in the matter. I suppose that Judge Barnard is like other men that belong to the Tammany Society; very few, excepting the Sachems and some others who have taken a very active part in it, thought at the time that he was a member. The question was asked me afterwards whether Judge Barrett was a member, and when I applied to Judge Barrett he fairly didn't know at first, until I said he was not a member.

Q. Have you not means of acquaintance with the course of public opinion in this city in regard to the character of official men; I don't speak of their characters, but I speak of the public opinion respecting them; have you not extensive means of judging of public opinion in that regard? A. I am somewhat delicately situated in that respect; I should suppose that being a public officer myself, believing in the fullest inquiry being made into public offices, I don't think my opinion is worth much on the subject. I certainly talk a great deal and listen a great deal to what is generally known as public opinion.

Q. Are you not very well informed of the current of public opinion in this city, in regard to men in office? A. I think so.

Q. Particularly the Judges? A. Well, not particularly the Judges. I have a very general acquaintance in New York, as I have been more or less of a newspaper man and a public man, and in that position might know the public opinion; I know what the sentiment of the public about it is, I think; but I am not in the position to be aware of the sentiment of the Bar to any vast extent on the subject.

Q. I am not speaking of any particular class of men. I am speaking of opinion in general. Now, I will confine it to the Democratic party. The Democratic party is largely in the ascendant here, in the point of numbers, isn't it? A. It is; very much.

Q. Does not the opinion of the Democratic party constitute the bulk of the public opinion of the city?

MR. PARSONS:

I don't understand that question.

MR. CURTIS:

Without taking the trouble to explain it, I will withdraw the question.

Q. I will ask you this question: What is the estimation in which Judge Barnard is held as a Judge by that portion of public opinion of which you have any knowledge? A. Well, sir, those things reflect themselves. I presume I have gathered my opinion from that which has been presented to me by persons with whom I am acquainted. He is held to be a careless man, very indiscreet in speech for one thing, very able in his way, reckless and peculiar, almost eccentric, but I know that the bulk of the people with whom I am acquainted believe him to be an honest man—that is, that he is not a corrupt man in a monetary point of view. That is my own opinion, and I have only taken it as a private citizen from the opinions of other private citizens, without respect to Judge Barnard, whom I believe to be a very careless man in his action.

Q. Did you ever hear anybody impute to him pecuniary corruption in his office? A. I never heard any one impute it, unless I might consider that he would like to have me think that he imputed it to himself. I never heard any one else impute it to him. I think he would be rather proud of the fact if he could make me or any one else believe that he had been doing some rash thing when he had not, to see how brave and daring he could be.

Re-direct by MR. PARSONS:

Q. Are you speaking of Judge Barnard? A. Yes, sir. I never heard any one impute to him anything dishonest or corrupt.

Q. Do you mean that Judge Barnard has made statements permitting you to infer that he acquiesced or conceded that a charge of pecuniary corruption might be made against him? A. Not as regards pecuniary corruption. I think Judge Barnard has never stated the

thing in a shape to say that he had been or would be guilty of pecuniary corruption.

Q. Of what kind of corruption is it that Judge Barnard has gone so far as to state to you that he was guilty? A. He never has stated that he was guilty of anything; I merely say that in a jesting, careless manner, he has, to a much greater extent than any other official I know, thrown out careless remarks as to other persons, or as to the general course of corruption. He was not as particular and as guarded in his statements as regards the general effect of corruption as a Judge in the Supreme Court ought to be.

Q. Do you mean so far as concerns himself? A. Not particularly concerning himself.

Q. Either particularly or not particularly? A. No, I think not. I never heard of Judge Barnard directly or indirectly doing any wrong, even from himself. I say that the worst idea I ever could get of Judge Barnard's idea of what was right or wrong would be from Judge Barnard's own actual inconsiderate mode of speaking. I want to be understood distinctly as saying that I never heard any one who would convey the impression about him half as bad as he would of himself—of his own way of speaking of himself—and never as regards any absolute corruption. I think of Judge Barnard, that he is inconsiderate, careless, loose, undignified, if you choose—ungraceful for a Judge, in my opinion—but I know also, in my humble opinion, as to his manner of dressing, acting, and talking, that the public opinion which would be likely to be against him would come from people who knew him a great deal quicker than it would from those who did not, on that account. I don't think that his manner or actions have been specially creditable to him, and I think they have given him more of the bad impression which prevails about Judge Barnard than anything that he ever did.

Q. Is there not a very prevalent opinion, even among the class of whose opinion you can speak, that Judge Barnard is very much under the influence of friends? A. Well, sir, as a general thing, the impression is that he is a faithful man to his friends; that is, the friends that he was associated with as a partizan or as a private man.

Q. Or as a Judge? A. I don't say as a Judge; I don't know anything about him as a Judge in that respect.

Q. I am asking about the public opinion of the class for whom you undertake to speak; is there not with them the opinion that Judge Barnard, as a Judge, is very much influenced by his friends? A. I think that, in my opinion, includes corruption.

Q. I am not asking you about your opinion, and I am not assuming corruption, but I simply ask you whether there does not prevail, very generally, among the class for whom you undertake to speak, the opinion that Judge Barnard is very much influenced by his friends? A. To a certain extent, and assuming all other things to be equal, I think, and I have no doubt others think, that he would give a friend the preference in all matters not absolutely wrong. I should not like to state that Judge Barnard would do a wrong thing as a Judge.

Q. But is there not an opinion on the part of those to whom you refer, those with whom you mix, that Judge Barnard would do even a wrong thing under the influence of friends. I am not speaking about your opinion? A. Well, sir, if you will allow me—

Q. Won't you please answer the question? A. Not excepting as coming from that very inconsiderateness of speech with which he is afflicted, I believe.

Q. Do you mean inconsiderateness of action as well as speech? A. I mean more as regards speech; I believe Mr. Barnard would be very apt to say a thing, and when acting, he would do what was honest and right.

Q. Without reference to the cause which has produced the opinion, does not the opinion prevail with that class to whom you have referred, that under the influence of friends, Judge Barnard will, as a Judge, do things which could not be approved? A. Well, sir, I must repeat that I think that that opinion to a mild, moderate extent, does prevail, and I also repeat my opinion that it comes from that same peculiarity or eccentricity or inconsiderateness of speech; it comes from his own talk; I have that idea of Judge Barnard; I think others have agreed with me. He is a man who is very faithful to his friends, kind and generous to his friends in private and social life. I know of no case in which he has done anything wrong to please a friend.

Q. Did not the opinion also entertain among that class to whom you have referred that there are certain lawyers who have undue influence with Judge Barnard? A. That I only know from newspaper remarks; I know nothing of them.

Q. Do you mean you never have heard such a charge made in conversation? A. Very little, within the limits of my office or acquaintance with any of the gentlemen with whom Judge Barnard is connected, newspaperially; I do not know them personally, to any extent. I have heard Mr. Coleman's name mentioned only, and no other person.

Q. As influencing Judge Barnard's judicial action? A. No, not as influencing his judicial action, except as connected with him as Referee. What I know is the *Times* and the newspaper charges. I know very little of Mr. Coleman. I do not visit Judge Barnard. I never passed five words with Mr. Coleman in my life.

Q. Aside from what the newspapers say, do you know what is the general opinion in reference to Judge Barnard's official course, or his action as a Judge? A. In regard to what?

Q. His action as a Judge? A. Nothing; I know of nothing except as I have stated.

Q. The question is whether, aside from what the newspapers say, you yourself are acquainted with the general opinion entertained of Judge Barnard's official course and action as a Judge? A. A class of men think favorably of Judge Barnard's ability and character as a Judge.

Q. Are you acquainted with any general feeling on the subject? A. Not very generally.

Q. Except that which the newspapers represent? A. Not very generally, and hardly at all, except in reference to rumors, as I said, and the influence of friends legally exercised. I am not acquainted with any one who has made such statements, or who is interested in them.

Q. Do you know the feeling of the business community with reference to Judge Barnard's judicial course and action? A. Comparatively nothing, except what I gathered from the papers. I understand it is prejudiced against him.

Q. Do you know the feeling of financial circles in respect to Judge Barnard's official course and action? A. No, sir; not at all.

Q. Is the class of whose opinion you have undertaken to speak that which is known as the Democratic political party in the city of New York? A. Mainly so. I speak mainly for the politicians.

Q. And mainly those politicians that are officeholders? A. No; mainly, I suppose, the gentlemen who are interested in Democratic politics. I am known to be the most active manager in the Manhattan Club; I may individually be supposed to represent some of the ideas there, and those gentlemen are not officeholders.

Q. Is Judge Barnard a member of the Manhattan Club? A. I think he was; I am not positive whether he remains a member or not. He was a member.

By Mr. CURTIS:

Q. Is not that very doubtful, whether he was a member of the Manhattan Club? A. I think he was. I think mostly all the Judges in the city joined the Manhattan Club.

By Mr. PARSONS:

Q. Have you never heard Judge Barnard charged with pecuniary corruption? A. Not directly, at all.

Q. Either directly or indirectly? A. I have heard him defended, which, of course, implies an indirect charge. I have heard him defended, but not charged.

Q. Do you mean defended against the charge of pecuniary corruption? A. I have heard it positively said of him, that he was a man who would talk very loosely, but who would never take a dollar that did not belong to him. I have heard that said by a number of people. I have heard that from people who ought to know.

Q. Was that said in conversation in respect to Judge Barnard's action in any particular litigation affecting Fisk & Gould? A. I think it was, and in reference to the newspaper remarks and abuse at the time, and the numerous newspaper fights. At the social clubs, which I frequently visit, that has been more or less the subject of frequent association.

Q. And the charge against which he has been defended has been of pecuniary corruption? A. In regard to the general newspaper abuse of Judge Barnard.

Q. Was that abuse—abuse charging him with pecuniary corruption? A. Not especially.

Q. Was it a charge of pecuniary corruption? A. I do not remember that it was. I have only skimmed over the articles from time to time, and there has been so much said about Judge Barnard's course in the papers that I have never had time to follow all the intimations.

The CHAIRMAN:

I do not think it is material what kind of a charge the newspapers have made against Judge Barnard.

Mr. PARSONS:

I do not desire to get at what the newspapers say, but the testimony of Mr. Taylor in reference to conversations to which newspaper articles have led, and what I ask Mr. Taylor is, whether the charge against which, in these conversations, Judge Barnard has been defended, is a charge of pecuniary corruption. What I want to know is the talk of the community in respect to Judge Barnard, upon which subject Mr. Taylor has been examined by Judge Barnard's counsel.

Mr. ANDREWS:

I do not object to it, only to the time; that is all.

Q. Among the class to which you refer, does not that opinion prevail, that Judge Barnard is very much influenced by prejudice and partialities? A. I never heard that stated.

Q. Not that he is influenced by prejudice? A. As all men are, more or less.

Q. Have you not heard it charged against Judge Barnard that he was influenced by prejudice very much beyond what is ordinarily the case? A. Not specifically. I am not familiar with the charge made against him.

Q. I am not asking you about specific charges, but about the opinion of this class? A. Judge Barnard's manner, as I have stated, and must reiterate, to me and to many like me—

Q. I am not asking in reference to that; I am simply asking the opinion of people in regard to Judge Barnard's official action? A. It conveys the idea that he is careless, and that he would have a style of manner rather indefensible in a Judge of the Court, and possibly conveying the impression that he would do as he liked, that he would act according to his prejudices, or as he felt inclined. I do not know of any cause, or any thing connected with a cause, in which he has done so.

Q. In the testimony which you have given on the examination by Mr. Curtis, and on your cross-examination on that subject, have you intended to testify only to your own impressions due to your intercourse with Judge Barnard? A. To a certain extent. I gathered my view from the views of those I believe have talked with him. The newspaper talk, and the mere gabble of the street, of course, I pay no attention to. I gather my own ideas as to whether Judge Barnard is an honest man from his friends and enemies, from the people I believe to be honest in their opinions, and when I give my opinion I give it as that of a class to a certain extent. I have no particular pre-

judice against Judge Barnard or for him. My own opinion, gathered from that of my class, or my political associates, is that he was a very able man, and very inconsiderate in his remarks and habits, and doing many things as a Judge which I considered undignified, but not a corrupt man. I merely gathered that myself. I know of nothing, and if I did I should have told it.

Q. You speak of his enemies. Have you had conversation about Judge Barnard with his enemies? A. I have heard men very prejudiced against him at times.

Q. Can you name any such?

Mr. ANDREWS :

Is not this going a little too far?

The CHAIRMAN :

What you want to get at is general public opinion.

Mr. PARSONS :

We want to see whether Mr. Taylor can speak of public opinion?

A. I have understood Mr. George Jones and Mr. Jennings—I am acquainted with all the editors, and I have heard some of them say very bitter things against Judge Barnard and others, the same as we hear in the press.

Q. Charging him with pecuniary corruption? A. No, sir; not particularly.

Q. Do you know John E. Develin? A. Yes, sir.

Q. Do you know him to be an intimate personal friend of Judge Barnard's? A. I do not know what the existing relation is, particularly; I know he was years ago a particular friend of Judge Barnard's, but my acquaintance with Mr. Develin has been very light for the last four or five years.

Q. Was it not Mr. John E. Develin who obtained from Judge Barnard the injunction in the case of *Scott vs. The Society of Tammany*? A. So I have understood.

By Mr. VEDDER :

Q. Do you mean that the opinion that Judge Barnard would incline to favor a friend, is formed by his mode of speech and conduct as a citizen, rather than by any act he ever did for a friend as a Judge? A. Yes, sir.

Q. Do you know whether or not he ever did an act to warrant a belief that as a Judge he would favor a friend? A. Did an act judicially.

Q. Yes, judicially. A. I do not know of any specified judicial act he has ever done.

Mr. FLAMMER :

He has testified, "all things being equal."

Q. Aside from his speech and conduct, do you know, or have you

ever heard of his doing anything as Judge for a friend, from which act alone it could be inferred that it was favorable to a friend; that is, I say, aside from his speech and conduct, did you ever know, or did you ever hear of his doing an act as a Judge from which act alone it could be inferred that it was a favor to a friend? A. No, sir. I know of nothing of the kind. I want to say that my acquaintance with Judge Barnard has been made up socially at clubs, &c., and as a Judge I have very little information as to what he has done. I have not made it my business as a general thing to understand what suits have been before him, nor am I familiar with them, nor do I know anything about the course of law before him, or with the Courts.

ROBERT LINDSAY SWORN. Examined by Mr. STICKNEY :

Q. What is the book that you produce here? A. Minutes of the Court of Oyer and Terminer.

Q. Will you refer to the minutes for the 15th of December, 1871. What Justice of the Supreme Court held Oyer and Terminer on that day? A. Judge Ingraham, according to the book.

Q. Refer to the minutes, and state for how long he had been holding the Court before that day, and for how long after that day he held the Court? A. December 7th, 1871, he opened Court.

Q. Was that the first Monday of December? A. On Thursday.

Q. The Court of Oyer and Terminer? A. Yes, sir.

Q. And how long did he hold the Oyer and Terminer? A. Until December 28th, I see, so far.

Q. Did any other Judge hold the Oyer and Terminer before those days? A. I do not see any on those minutes.

Q. Will you refer again to the minutes of the 15th December, and state from the minutes to what day Judge Ingraham had adjourned the Court of Oyer and Terminer? A. He adjourned from the 15th to the 18th.

Q. And the 18th was what day of the week? A. On Monday.

Q. Have you produced the bail bond which was given by William M. Tweed? A. Yes, sir. (Witness produces bail bond).

Mr. STICKNEY :

We wish it entered on the minutes from the original bail bond that it was executed on the 16th day of December, 1871, by William M. Tweed, as principal, with Alfred B. Sands as surety, in the penalty of \$5,000 for Mr. Tweed's appearance at the next term of the Court of the General Sessions of the Peace, held in and for said city and county of New York, to answer to said indictment against him, and that these words appear: "Taken and acknowledged before me the day and year first aforesaid. George G. Barnard, J. S. C." The recital is: "Whereas the said William M. Tweed was, on the 15th day of December, 1871, duly indicted in the Court of General Session of the Peace, in and for the city and county of New York, for the offence of a felony, now, therefore, the condition, &c."

Q. The words George G. Barnard there are in Judge Barnard's handwriting, are they not? A. I cannot say.

Q. That is the original bond from the files of the Court? A. That is the original bond from the files of the Court, so the Clerk told me, and I got it directly from him.

Mr. ANDREWS :

We do not dispute the signature; we admit it. The signature is admitted, of course.

Q. You say you were not present? A. No, sir.

MANSFIEL COMPTON, SWORN. Examined by Mr. PARSONS :

Q. Are you a practising lawyer in the city of New York? A. I am.

Q. Were you attorney for either party in the suit of *Sheppard vs. Thompson*, in the Supreme Court? A. I was the attorney for the plaintiff.

Q. What was his name; A. Albert W. Sheppard.

Q. Who were the defendants? A. Joseph Thompson, James G. Tighe and John A. Duff.

Q. Is John A. Duff, defendant in that suit, the John A. Duff who was Receiver of the Olympic Theatre property? A. Well, I cannot say.

Q. Do you understand him to be the same? A. I understand so; I do not know.

Q. Do you know him as connected with the Olympic Theatre? A. I have heard him spoken of in connection with the Olympic Theatre.

Q. What was the nature of that suit? A. It was a suit brought by Mr. Sheppard, who was the assignee of a judgment that was against Thompson for an accounting under an assignment made by Mr. Thompson on the 1st day of December, 1865.

Q. An assignment made to whom? A. Made to Mr. Tighe; Mr. Tighe was assignee, and Mr. Thompson the assignor.

Q. What was Mr. Duff's connection with the controversy? A. Mr. Duff was scheduled as a creditor of Mr. Thompson.

Q. To what amount? A. Some \$40,000—about \$40,000.

Q. What was the amount of the plaintiff's claim? A. \$5,557, I believe; I think that was the amount.

Q. And was the suit brought to recover that amount of \$5,557? A. The suit was brought on behalf of the plaintiff, and all other creditors who might come in and contribute to the expense of that action.

Q. Had the plaintiff any other claim than this \$5,557? A. No, sir, no other claim; and no creditor having come in, I suppose that was all that there was involved in that suit.

Q. Did any other creditor come in down to the trial? A. No, sir; no other creditor came in.

Q. So that when the case came on to be tried, the only claim in the

suit was the claim of Sheppard to the amount of \$5,557? A. Yes, sir; that was the only claim in the suit.

Q. When did the suit come on for trial? A. I think it was the 14th day of December, 1871.

Q. Before what Judge? A. Judge Barnard.

Q. At a Special Term of the Supreme Court? A. Yes, sir.

Q. Did you discontinue the suit as to either defendant when the suit came on for trial? A. I discontinued the suit as to the defendant Duff.

Q. In what way was the discontinuance? A. I opened my case to the Court, and stated the nature of the action, and what it was brought for, and stated Mr. Duff's connection, and the allegation that was made against him, and stated to the Court that I should abandon the suit against Mr. Duff. I had reasons for it.

Q. Was the complaint then dismissed as to Duff? A. The complaint was dismissed as against Duff by my motion.

Q. Was that before you proceeded with the trial, so far as to call testimony? A. It was done on opening the case; there was no trial of that case, as I understand, unless you call that a trial, because the Judge dismissed the complaint, on motion of the defendants' counsel, as to them also.

Q. Before you proceeded with the testimony? A. Before I proceeded with the testimony; I have got the stenographer's notes here.

By Mr. ANDREWS:

Q. Have you got the names of the attorneys and counsel on the other side? A. I have not.

By Mr. PARSONS:

Q. Was not this what took place: it was admitted that the plaintiff had received a judgment on certain notes made by the defendant Thompson, prior to the assignment, and payable to one Van Boochelin; that thereupon you, as counsel for the plaintiff, moved to dismiss the complaint as to the defendant Duff, and asked the Court to direct a reference, and that thereupon the counsel for the defendant Duff offered in evidence a discharge in bankruptcy of the defendant, made on December 9th, 1871, and that the complaint then was dismissed as to the defendant Duff, with costs? A. That is what took place, except that Mr. Thompson had put in no answer; the assignor had put in no answer whatever, and I claimed that the answer of Mr. Tighe admitted itself all the facts necessary for an accounting, but in addition to that, before I had gone to trial, I had obtained from the other side an admission that those judgments were recovered upon notes made by Thompson, due and existing at the time he made that assignment; I had that admission in writing, signed by all the counsel.

Q. And was that stated to the Court? A. I held it in my hand, and stated to the Court what the answer admitted, and then that I had that admission as is stated there.

Q. The point is, whether upon that, and upon your asking that the

complaint be dismissed as to the defendant Duff, Judge Barnard so ordered? A. Yes, sir; he ordered the complaint dismissed as to Mr. Duff.

Q. Now, as to the defendants Tighe and Thompson, state what took place? A. I made my motion for a decree for an accounting upon the complaint, answer, and that admission as against Tighe and Thompson; Thompson had suffered a default, or the assignor had suffered a default; there was no answer to him, and the only answer then in the case was the answer of Tighe.

Q. What took place? A. Upon my making that motion I halted; immediately counsel on the other side jumped up and moved to dismiss the complaint as against Tighe and Thompson.

Q. Was there not first a motion to amend by setting up a charge of bankruptcy? A. No, sir; I think that was subsequently; I am quite sure it was; I may be mistaken. However, I do not know that it is material.

Q. Was there not an application made to Judge Barnard by the counsel for the defendants Tighe and Thompson for leave to amend their answer by setting up Thompson's discharge in bankruptcy? A. Yes, sir.

Q. And did not Judge Barnard grant that motion? A. Yes, sir.

Q. Against your opposition? A. I objected to it.

Q. Now state what took place with reference to those defendants? A. My motion was to decree an accounting up on the complaint, answer, and the admission that I held; the other side moved to dismiss the complaint as to the defendants Tighe and Thompson, upon the ground that the complaint charged a conspiracy against all the defendants, and the complaint having been dismissed as to one, it must be dismissed as to the others, or, to use their own language, counsel stated that the defendants must stand or fall together.

Q. Did Judge Barnard grant the motion? A. He granted their motion.

Q. And dismissed the complaint as to those defendants? A. As to those two defendants also.

Q. How long did the whole proceeding last? A. Well, perhaps, well on to an hour, because we were discussing considerable.

Q. Not to exceed an hour? A. It did not last to exceed an hour, I don't think. Sometimes counsel are deceived as to time when they are engaged in Court and talking; I should judge it was about an hour.

Q. No evidence taken? A. No evidence was taken.

Q. Upon the decision of this motion before Judge Barnard, did he grant allowances? A. Yes, sir.

Q. What allowance did he grant to the defendant Duff? A. \$1,500.

Q. What allowance did he grant to the other defendants? A. One thousand dollars to Tighe and Thompson, the order reads.

By Mr. ANDREWS:

Q. What was the name of the attorney who appeared on the other

side? A. Mr. C. F. Wetmore appeared for Mr. Duff, and Mr. Tighe appeared for himself.

Q. Is Mr. Tighe a lawyer? A. Mr. Tighe is a lawyer.

Q. Do you know what his christian name is? A. James G. Tighe. There was a person appeared in connection with him who claimed to be his counsel on the trial, although he was not the Attorney of Record, a man named Davis, I think.

Q. What was this action about? What was the subject-matter of the action? A. To go back: on the 1st day of December, 1865, Thompson made an assignment to the defendant Tighe, involving property of about \$100,000. Tighe accepted the trust, and converted that property into money, and the allegation in one complaint was, that he had received 90,500 and odd dollars; that he had only paid out about \$1,000, as near as I can speak now; I may be a little wrong about figures, but about that; that the balance he fraudulently claimed to withhold for services, and other fraudulent devices. I do not recollect now exactly, but, at any rate, he claimed to retain all the balance of that \$100,500.

Q. The amount really involved was something like \$100,000? A. The amount involved in the assignment was \$100,000. The amount of the suit of my client was \$5,557.

Q. But it grew out of that transaction? A. It grew out of that transaction, that Tighe had not accounted.

Q. Have you any copy of the pleadings with you? A. I have not. I have the pleadings at my office, and I will furnish you with them, if you desire. I have a copy of these orders of allowances, if you want them.

Q. I understood you to say, your claim in the complaint was how much? A. \$5,557; that is the exact amount.

By MR. CURTIS:

Q. Is that the utmost you could recover against the defendants? A. The way the matter stood then, it was. All I could claim was a payment out of that assigned property—according to my theory, all I could have claimed that Tighe could have paid me out of that assigned property, was \$5,557 and costs.

Q. Did not the controversy also involve the whole amount of that assignment? A. That is just where we all differed; that is where Judge Barnard and I differed.

By MR. ANDREWS:

Q. Did not Judge Barnard claim that it did involve that? A. The counsel on the other side claimed, it involved the whole amount of that assignment, and Judge Barnard took that view of the case.

Q. And on that footing he made the allowance? A. Yes, sir; I claimed the other view. I differed with Judge Barnard and with the counsel on the other side, but it was a respectful difference.

By MR. ANDREWS:

Q. You say that Mr. Duff went out of the suit? A. Yes, sir; Mr. Duff went out.

Q. At what time—at an early stage of the proceedings? A. I dismissed him voluntarily on my opening of the case to the Court.

Q. The reason why you dropped Duff out, after you commenced the suit against him, was what? A. I will tell you. At the time I brought the suit I was not disposed to make Duff a party, and I did it at the instance of several creditors, some of whom I represented, and other creditors of my client in that suit. They agreed to come in and contribute to the expense of that action. They did not do so. When it came to trial I did not think it fair to involve my client in the investigation of Mr. Duff's claim, without their contributing, and I dismissed the action, and I think I talked with them about it, but I will not be sure about that. If I did not talk with them just before it, I did at one time.

Q. Was not this an action which involved other interests than those clients that you represented? Did it not necessarily determine other interests? A. If I had not dismissed the suit as to Duff, I suppose it would have involved the interest of his claim against Thompson. The investigation would necessarily involve the validity of his claim, because I claim that was a fraudulent claim.

Q. And that was the assignment in the complaint? A. Yes, sir; in other words, I claimed that it was a fictitious, fraudulent, and usurious claim against Thompson. It was concocted by usurious interests.

Q. What do you mean when you say parties that you expected to contribute and take part in this action did not do so? What parties did you refer to, or what interest did they represent? Did you expect Duff, in the first instance, to become a party claimant with you? A. No, sir.

Q. Who were the persons you expected to join in that action and to contribute, in order to carry it on and procure the judgment? A. Jewell & Harrison I expected for one; I had talked with them about it.

Q. When you commenced the suit, you expected those people to share in the expense, as it was to determine their interests, was it not, as well your client's interests? A. I felt like this, that the claim I then represented only involved \$5,557, I was talking Mr. Duff's claim to the extent of \$4,000, and if I cut that out, others would be benefited to a larger extent than my client, and I did not think it was fair to fight them single-handed, unless they did contribute.

Q. Duff's interest was about \$4,000? A. He claimed an indebtedness against Thompson of some \$4,000; I do not recollect the exact amount.

Q. So that when you found that these parties that you expected to contribute would not contribute, you narrowed your case down to your own claim? A. I narrowed it down to the simple question of a decree for an accounting which I thought, with my view of the case, I was entitled to without any evidence at all.

Q. You had served Duff with a summons and complaint. A. Yes, sir.

Q. And he had answered? A. Yes, sir.

Q. And his counsel appeared in Court ready to try his case, and you withdrew it at the opening of the trial. A. I withdrew it at the opening of the trial. That is a plain statement of the case.

By Mr. PARSONS:

Q. Did your suit seek for your client more than \$5,557? A. That is all.

Q. When you received that, that was the end of the suit, was it not? A. Of course, it must have been so.

Q. The largest success that he could obtain in the suit was the recovery of \$5,557? A. And the costs of the suit.

Q. And no other parties, at any stage of the litigation, were involved on the plaintiff's side? A. None whatever.

Q. If these other parties of whom you have spoken, who had claims, were to press those claims, it would be necessary that they should commence other suits, would it not, or intervene in this? A. They would have had to intervene in this, or bring other suits.

Q. And they did not intervene? A. No, sir.

Q. And never did intervene? A. No, sir.

WILLIAM H. TRACY sworn. Examined by Mr. STICKNEY:

Q. Have you been counsellor at law in the city of New York for some time? A. Yes, sir.

Q. For how long? A. Nearly fifteen years.

Q. Have you been an intimate friend of Judge Barnard's for some time? A. I have.

Q. Has he been in the habit of appointing you as Referee? A. He has appointed me Referee.

Q. Can you give the Committee any idea of how many times? A. Not definitely; quite a number.

Q. Have you ever had any pecuniary transactions with Judge Barnard? A. Yes, sir.

Q. Will you state what they have been? A. I had one, and one only.

Q. State what it was, and when it took place; give the circumstances fully? A. In July, 1871, a friend of mine advised me of a piece of property for sale, and suggested to me that it would be a very good thing for me to look after it during our vacation in Court. I said to him that the amount of money required was more than I was able to advance; that I would make inquiry among my friends, and if possible I would take the property, but it would be absolutely necessary for me to get assistance from other sources to take a portion of it. I consulted with one or two, feeling able to take one-third of the property. I sent for one or two parties, who visited me. I stated to them my object in sending for them, and what I wanted, and one of them consented to take one-third, and seemed quite anxious, after my statement, to take one-third. This conversation was in the presence, I think, or as Mr. Coleman was passing through his room - his room adjoined mine, that is where my library is, where I formerly had an office. He overheard some of the conversation, and he made the re-

mark to me : "Why don't you speak to the Judge? Possibly he can take that." It struck me as satisfactory, and from that, whether it was myself who spoke to the Judge about it I am not sure, I may not have seen him for a few days, or whether I requested Mr. Coleman to speak to him about it, I don't recollect exactly. I saw the Judge a few days afterwards, and he said he would take one-third interest in it. We purchased the property. I can tell very near the figures; at all events, it was rising \$100,000. There was a large mortgage on it—a very large mortgage on it—a mortgage probably from \$70,000 to \$75,000, something like that; and shortly after I took the contract I had the good fortune to have an offer for the property. I took a sixty day contract for the property, which would expire on the 1st day of September, 1871. It was not a sixty day contract, it was about a fifty-five day contract; it was intended for a sixty day contract, but it expired on the 1st day of September, 1871. During the interval, I should judge, probably in the latter part of July, I had an offer for the property, and I accepted the offer, as it was left in my hands for disposition, and the terms of the contract were that we were to give title on the same day we received title, to wit, the 1st of September. There was a consideration, and it strikes me the consideration was in the neighborhood of \$5,000 or \$6,000. A party who was taking one-third interest with me paid his portion, and I gave a check for the amount of the sum specified to be paid on the day we took the contract. Probably it was the 5th of July; it was about the 1st, I think; it was the 5th of July. It strikes me it was on my return from the country. I went to the country to spend the 4th. I think thirty days subsequently there was another installment due, about the 30th of August or the 1st of September. Then I was going out of town. I left word with the attorney who was searching the title for me that I would send in my installment of \$2,000, and that the party I spoke to first would send his installment, and if he dropped a note to Judge Barnard, he would probably respond with his \$2,000. On my return from the country I understood from the attorney that the \$2,000 had been forwarded by check to his order, I think.

Q. Who was the attorney? A. David D. Terry.

Q. For the seller? A. He was my attorney. He was for the grantee under the contract, and for the grantor and seller. On the 1st, or about the 1st of September, we saw the party selling, Mr. Beers, and it was suggested to close the title the day before. I am positive it was the last day of August instead of the 1st of September the title was closed; that is, the transfer was made to the purchaser. It strikes me Mr. Beers is the grantor in the deed to us.

Q. Do you remember his christian name? A. I do not, but it is a matter of record, and I may give you the dates, so that it is positive to couple the two. The grantee on the 1st or 2d of September, 1871, was Fernando Wood. We sold the property. I adjusted all the expenses of the sale, and attended to that through the attorney. It was during my vacation, when we had no Court. It was during the month of July and August I visited the attorney, and he communicated with me. We

closed the matter up, and I gave Judge Barnard, about the 2d or 3d of September, within a few days of that time, a check, or sent a check to him, and that was the only pecuniary transaction I ever had with him.

Q. Do you remember what your original price was? A. Yes, sir.

Q. What was it? A. \$100,000.

Q. What was the first payment that was to be made? A. I think \$3,500.

By Mr. ANDREWS:

Q. That was simply to bind the contract? A. Simply to bind the contract.

By Mr. STICKNEY:

Q. Was your contract with this Mr. Beers? A. No, sir.

Q. With whom was your contract? A. I took the assignment of the contract. I can tell you Mr. Beers' price, for I know that was spoken of at the time we transferred. The name has escaped me at this moment.

By Mr. ANDREWS:

Q. It is a matter of record? A. It is a matter of record. We took the deed from Mr. Beers.

By Mr. STICKNEY:

Q. He was a party that contracted to sell with your assignor? A. My assignor, or my assignor's assignor. The contract had been twice passed. It was a piece of property desirable, and it seemed to advance rapidly.

By Mr. ANDREWS:

Q. Without the action of transferring the title? A. The title was not transferred; it was specified in the contract that I should take title from the original grantor; that is, the assignor of my assignor.

By Mr. STICKNEY:

Q. \$3,500 was the price paid? A. I think so. It might be larger than that, but it strikes me now it was \$3,500. I remember distinctly the installment that was due.

Q. Who was the party interested with yourself and Judge Barnard? A. Mr. Francis Higgins.

Q. You each had a third interest? A. We each had a third interest.

Q. What was the second payment made by you? A. \$6,000.

Q. And when? A. I think August 6th; I am quite positive it was August 6th. It may have been between the 1st and the 6th, but I think it was August 6th.

Q. When was the next payment? A. I think we closed the title the day before, on the last day of August.

Q. How much was to be paid in cash? A. One mortgage, I think, was \$60,000, and one mortgage for \$16,000—\$76,000 that would bring it; in the neighborhood of \$34,000. That was not the entire money that was paid; the difference between what we paid and the signing of the contract, and the \$6,000 paid.

Q. That would make about \$24,500? A. \$24,000 or \$25,000. I should think if I were to say in round figures \$25,000, that that would be very close to it.

Q. How much money did Judge Barnard advance on this? A. He advanced the \$2,000 intallment. I didn't ask him for his portion; I simply called his attention to it, for I had signed the contract and given the check, and said nothing to him about that, and told him I was going out of town, and would send him a check for the \$2,000, and requested him to do so, or sent him word, I think probably through the attorney.

Q. You saw this check? A. I don't think I did, for this very reason, because I requested the attorney, as I was going out of town, to send him word to forward the check to him or the money, whichever me chose; I don't think I saw the check.

Q. You have no personal knowledge that it was paid? A. No, sir.

Q. But you have no doubt of it? A. I have no doubt of it, for the simple reason that we got the receipt for it, and the attorney told the he had received the money, or a check, from Judge Barnard, and had received mine, and also Higgins', making the \$6,000, and he paid it. I think I saw the receipt endorsed on the contract; I am quite sure of that.

Q. You, of course, yourself, didn't make the payment of the \$25,000, or how was that done? A. It was for the transfer, and I secured money for the day, and made arrangements that it might hold over for another day.

Q. How much advance did Mr. Wood pay to you on the purchase? A. \$15,000; that is, we paid \$110,000 for the contract.

Q. And he was to pay how much? A. \$125,000; \$90,000 was the original contract. Then it sold for \$100,000, and came into our hands at \$110,000, and I sold it for \$125,000, so there were two or three transfers of the contract, in fact.

Q. Do you remember what were the expenses? A. Yes, sir.

Q. Can you state them? A. Yes, sir. To particularize, that would be impossible. I know this: that the afternoon of the transfer, when the attorney closed the matter for me, I made up the statement of it, and it left, after all expenses - of course, we had to pay out commissions, and our commissions were pretty high for the sale—it left it so that there might be within a few dollars either way of making an equal division of \$12,000 between three; that is, leaving about \$12,000, but a few dollars less, that is, to make \$4,000 to two; and it would leave a trifle short for the other, and the profit, that is, what we considered the profit that each of us three made, was \$4,000 each.

Q. And that was Judge Barnard's share? A. Of the profit. As I say, to particularize as to what the expenses were, I could not do it, but it left \$4,000 profit each, a very good transaction.

Q. And you paid that? A. I paid that, together with the \$2,000 that were sent. That is how I know it must be paid. I gave my check, payable to the order of Judge Barnard, for \$6,000.

By Mr. ANDREWS:

Q. That included the \$2,000 that he advanced? A. The \$4,000 profit; we considered that we cleared \$12,000. It was a few dollars short, but \$12,000 was what we considered the profit was.

By Mr. STICKNEY :

Q. Mr. Terry managed all these things, and made the disbursements for you? A. He made the disbursements for the search, and for the examination, I know; I think the commission alone on it amounted to \$1,500, so that made a hole in the profit. That I paid myself.

Q. Who paid you the \$15,000 advance, or the money that was to go to the payment of the contract price? Do you remember who paid you the \$15,000 advance, or the money which was to go to pay for the real estate under the contract? A. Fernando Wood.

Q. Do you remember on what date? A. Within forty-eight hours of the 1st of September, either one way or the other; the 1st of September was the date.

Q. Sent to you by this check? A. By this certified check.

Q. To you? A. Paid to my order.

Q. And by you deposited? A. By me deposited, within forty-eight hours of the 1st of September, one way or the other.

Q. Have you any objection to showing the entry on the stump of your check book? A. Not the least; I have not got the stump.

Q. Or the check? A. I have not got the check. I have got the book which will show you just where the deposit is. [Witness produces book.] It happens to strike on the 1st.

Q. State what the amount of the deposit appears to be? A. \$48,493.93.

Q. Explain how the deposit happened to be of that amount, if you please? A. That is the amount of the check; I received it.

Q. How was that amount made up? A. I stated that this check was a check I received from Mr. Wood. You asked me how I arrived at these figures.

Q. The amount of it is what? A. \$48,493.93. The payment that we made at first of \$3,500 I am not so positive about; I think it was about that, but I give you that as the basis, \$3,500. The payment we made on August 6th, was about \$6,000. Then I stated, I think, that we paid about \$25,000 at the time we took the title, and our profit was about \$15,000. Those were the figures which struck me as the figures, and you will see how near they come to it?

Q. That makes \$49,500. A. It is probable that that was \$2,500 instead of \$3,500; something of that character, but that is the way it was made up at all events, and I gave my check for that amount, and it is the only pecuniary transaction I had with the Judge.

Q. You said that contract is on record? A. I don't think it is on record, but I think I can furnish it to you. If I can find it, I will send it to you.

Q. State if you have kept any books of account during the past year? A. None, whatever.

Q. Have you been in the habit of speculating or dealing to any extent in real estates? A. Considerably.

Q. Did you have any account whatever of those transactions? A.

Not of those transactions whatever; simply keeping a memorandum of the property I have, and its incumbrances.

Q. Have you any cash account for the past year? A. None, whatever.

Q. Have you any books of account in which appear any of the items connected with this speculation, or investment, which you have just mentioned? A. No, sir; none, whatever.

Q. Have you kept, during the year 1871, a check book? A. Portion of the year. In fact, I had a check book all the year, but I have a check book for a portion of the year now.

Q. For what portion of the year have you a check book? A. The latter portion.

Q. Beginning at what day? A. I think about November 1st.

Q. Where is the check book for the month of September, 1871? A. I have not the least idea; when I got through with the check book, that was the end of it. I have no check book in advance of the one I have.

Q. Have you a check book for a period later than that? A. Up to date, and will very willingly show you every item in it.

Q. State what the number of the first check is in the check book which you now produce, and what the date of it is? A. No. 787, October 7th, 1871.

Q. Those checks are drawn on what bank? A. Chatham National.

Q. How long have you had an account in that bank? A. For years past.

Q. The checks for the month of September, 1871, would have been in the check book preceding that one, would they not? A. I think immediately preceding, in all probability.

Q. Have you any knowledge where that check book preceding the present one is? A. Destroyed probably, thrown away long ago, at the time I ended it. This is the only check book I ever had with revenue stamps in it. Those others were simply books that I got from the bank without any expense whatever. This is the only book I ever had with the revenue stamps inserted.

Q. Do you remember when you last saw that check book? A. I do not. I don't suppose I have seen it since I commenced to use this one.

Q. You have no recollection on that point? A. I have not seen it since; I can't call to mind having seen it since.

Q. Have you any recollection of ever directing it to be destroyed? A. None, whatever.

Q. Or of destroying it? A. No more than a general destruction of matters of that character. In all probability I destroyed it myself. I have not the least doubt but what I threw it in the scrap basket.

Q. Have you any recollection when you destroyed it? A. I think when I commenced the new book.

Q. How positive can you be upon that point? A. I can be quite positive.

Q. Have you, during the year 1871, or before, been engaged some-

what largely in real estate speculations, or investments? A. The way they speak of large investments in New York, I have not.

Q. But about to what amount? A. This was the largest purchase I ever made, and the largest transaction I ever was engaged in.

Q. You have been engaged to a considerable amount? A. The way they speak of real estate in New York, I have not. I have been considerably, but not to a considerable extent, to use the term you use.

Q. You have no account or memorandum of any kind in relation to this, or in relation to any other of your real estate investments? A. Not one. I have simply a memorandum book with the property I own, with the incumbrances on it, and when the interest is due, and perhaps the assessments.

Q. Do you keep that book yourself? A. That these things are in?

Q. I mean do you make the entries in it yourself? A. Yes, sir; it is only four small pieces of property I have got. It is only a memorandum about four times a year.

Q. What property was this which you have mentioned? A. Eighty-first street and Madison avenue, extending back to Fourth avenue. I think three lots, if I mistake not, on Madison avenue front, eight lots on Eighty-first street, front, and four lots on the Fourth avenue, half the block, with the exception of one lot.

Q. You say that is the only pecuniary transaction with Judge Barnard that you have ever had of any kind? Yes, sir; the only one.

Q. You are very positive on the fact that there has been no other transaction between you? A. Very positive.

Q. Did you make any payment in August, 1870, to Judge Barnard? A. No, sir. Can you give me the date, if you please?

Q. Sometime in August, 1870. A. No, sir; I did not.

Q. You are sure about that? A. Yes, sir.

Q. Have you any memorandum or accounts which would show any payment made to Judge Barnard, if any there were made, in that month? A. I have no memorandum that would show.

Q. You have no account or paper of any kind which would enable you to ascertain whether any payment was made, or, if any was made, for what it was made? A. I have no account.

Q. Or papers? A. No, sir; nothing that would show.

Q. And you have no recollection whatever as to making any such payment? A. I have a recollection that I did not make it; I have that recollection.

Q. Are you sure that you didn't, on the 30th of August, 1870, deliver to Judge Barnard a certificate of deposit on the Chatham National Bank for \$7,075? A. My own you have reference to, or whether I handed it?

Q. A certificate of deposit issued originally to you, I believe? A. I don't remember of anything of the kind.

Q. Could you forget it if it had happened? A. I don't think I would have forgotten it, and still I don't remember anything of the kind.

Q. It may have been one day earlier, or it may have been one day

later. Did you, on or about the 30th of August, 1870, pay or deliver to Judge Barnard a certificate of deposit on the Chatham National Bank for \$7,075? A. I don't think I did.

Q. Can you now be positive that you did not? A. No, sir; I have no recollection of doing anything of the kind.

Q. If you did it, can you give any explanation or statement as to what that money was received by you for, or as to what it was paid for? A. I have not the least recollection in regard to that—not the least.

Q. And have you any means of ascertaining in any shape? A. I have no means of ascertaining.

By Mr. CURTIS:

Q. Did you ever pay or deliver any money to Judge Barnard for any purpose in the world that you didn't owe to him, or that was not his property before you paid it in some way? A. Clearly I never did.

Q. Were you ever made the means or channel of delivering to him, from anybody else, any money for any improper purpose of any nature? A. No, sir; I never was.

Q. Do you know of his ever having received from any quarter in the world any money, either to influence his action as a Judge, or to compensate him for any action as a Judge? A. No, sir.

THOMAS G. SHEARMAN SWORN. Examined by Mr. STICKNEY.

Q. [Handing affidavit to witness.] Will you look at the affidavit of Wilbur, Leonard, North and others, in Mr. Chase's suit, marked "Charge 2, F," and refer to the 4th clause of it, and you see there is mentioned an injunction order as being annexed to the affidavit? A. Yes, sir.

Q. And at the time a copy of that injunction order was annexed, which has probably become detached by accident, I suppose. A. Yes, sir; I see the papers were pinned together.

Q. State whether that [referring to injunction in the printed book] is a copy of the injunction which was annexed to the affidavit of Wilbur and others, and presented to Judge Barnard? A. I can answer all your questions, except as to its being presented to Judge Barnard. This is the injunction that was referred to in those affidavits, but I cannot say at all whether it was presented to Judge Barnard or not.

Q. In all probability, to the best of your recollection, a copy of the injunction order was annexed to the affidavit at the time of its presentation? A. I have a very indistinct recollection, but my impression of the case was this: That the papers were all put together, not even pinned as they are now, when they were sent in to Judge Barnard, and a copy of the injunction put in with them, and so sent from my office. The committee, of course understand that the limitation of my answer is simply a desire to keep within the truth.

[Injunction order in the case of the Albany and Susquehanna R. R. Co., dated August 5th, 1869, marked "Charge 2, E1."]

Q. That had been served on these Directors before they came to New York that evening. A. So they informed me.

By Mr. CURTIS :

Q. (Handing printed book to witness.) Look at those volumes. That is the case on appeal of the People of The State of New York, *vs.* The Albany and Susquehanna R. R. Co., and others? A. Yes, sir.

Q. I want to know whether those volumes contain correct copies of all the papers in all the litigated cases on both sides in that controversy? A. I don't think they contain all the papers. I think that, so far as they do contain those papers, they are correct copies.

CHARGE 9.

By Mr. PARSONS.

Q. Were your firm attorneys for James Fisk, Jr., in the suit brought by him against the Union Pacific R. R. Co. and others, in the Supreme Court, which became transferred subsequently to the Circuit Court of the United States? A. They were.

Q. When was that suit commenced, according to your recollection? A. Some time in 1868.

Q. In the Summer? A. Yes, sir.

Q. Were papers prepared in that suit upon which to apply for an injunction and a Receivership? A. Yes, sir.

Q. Upon those papers, was an application made to Judge Barnard in the Summer of 1868? A. I suppose there was; I don't know of my own knowledge.

Q. Did you prepare the papers? A. I did not.

Q. Who did prepare them? A. I cannot say of my own knowledge, but I should think Mr. Dudley Field.

Q. You mean Mr. Dudley Field, and not Mr. David Dudley Field? A. Mr. Dudley Field, his son.

Q. What papers were prepared? A. Summons, complaint, and I think some affidavits, but I am not sure, and an order to show cause why an injunction should not be granted. That order to show cause was all that was granted in the Summer of 1868, so far as I know.

Q. Were the summons and complaint the same as the summons and complaint upon which the suit proceeded? A. I suppose so. I don't understand the point of the question.

Q. Were any summons and complaints prepared which were not used? A. Not that I know of.

Q. Was an order prepared for the appointment of a Receiver? A. Do you mean in 1868?

Q. I mean in July or August, 1868, in that suit. A. Not that I ever knew or heard of.

Q. Did you not learn that Judge Barnard had granted an order appointing a Receiver in that suit in July or August, 1868? A. I never learned it, and don't believe such was the case.

Q. Did you learn that Judge Barnard ever granted such an order? A. Not until 1869.

Q. Is the order to which you refer the order appointing William M. Tweed, Jr., Receiver? A. It is.

Q. Was that the only appointment of a Receiver in that suit of which you know or ever heard. A. It is, so far as I have any present recollection or idea.

Q. Was not an order of injunction, or an order appointing a Receiver, or an order both granting an injunction and appointing a Receiver, made by Judge Barnard in July or August, 1868, which was subsequently revoked by him? A. Not that I ever heard or knew of.

Q. Did the proceedings in that suit progress continuously from its commencement through the balance of the year 1868? A. My recollection is not very precise on that point. So far as I can recollect, I don't think it did. I was out of town so much I cannot say. So far as I can recollect—and I may say that I was out of town during a good part of those proceedings, and especially at the commencement of them—after the order to show cause why an injunction should not issue had been obtained, and applications were made to a number of parties connected with the company to make affidavits, which they all refused to do, those parties were followed up, until, finally, and, I think, at an apparently early period after the commencement of this suit, those who were principally relied upon left the State, and refused to return so long as any attempt was made to examine them. My impression is that this caused a suspension of the proceedings for some time.

Q. When did that suspension commence? A. That is more than I can say.

Q. Was it in the Fall? A. I should think it was in August or September.

Q. Was that the only occurrence which caused any suspension of litigation? A. The only one of which I have any knowledge or information.

Q. And down to what time did the suspension thus continue? A. Well, that I cannot recollect positively; but I can remember that the next immediate proceeding was on the occasion of the annual election of the company, which was, I think, in March, 1869.

By Mr. TILDEN:

Q. The 10th of March? A. That is the next important proceeding which I recollect.

By Mr. PARSONS:

Q. Down to that time had your firm either acted upon or received any instruction in any way to interrupt or suspend the litigation? A. None that I know or believe.

Q. Was there any interruption of the litigation, of which you know or have ever heard, except that caused by the absence of those Directors? A. I cannot recollect any.

Q. Was there ever any settlement of that suit? A. Not that I ever knew of. Several efforts were made to settle, but I always understood that they all failed.

Q. Between whom were those efforts made? A. One was between Judge Fullerton and myself; another was between Mr. Fisk and Mr. S. J. M. Barlow.

Q. When was made the attempt to settle between Mr. Fullerton and yourself? A. July or August, 1868.

Q. Was Mr. Fisk cognizant of that attempt? A. Yes, sir.

Q. Did you act under his instructions in regard to it, so far as your action was concerned? A. Well, I acted at first without instruction from him, and reported to him what I had done.

Q. What was the result of that settlement? A. I was instructed by Mr. Fisk to decline the offer Judge Fullerton made, and I did so.

Q. How long did that negotiation continue? A. Somewhere from two to five days.

Q. Was there an offer on either side, and, if so, from which side? A. The offer came entirely from Judge Fullerton.

Q. What was that offer? A. \$50,000.

Q. What was Mr. Fisk's answer to that proposal? A. He considered it for a few minutes, and then said positively that he should decline to accept any such offer, that it was altogether below what he conceived his real interest in the suit to be.

Q. Was Mr. Fisk present at any interview between Mr. Fullerton and yourself? A. He was not.

Q. Was this refusal of Mr. Fisk's communicated by you to Judge Fullerton? A. It was.

Q. Did that terminate the attempt at settlement? A. It certainly did, as far as Mr. Fullerton and I were concerned, and I suppose it did entirely.

Q. At what stage of the earlier portion of this litigation was this attempt? A. It was during the first little lull in the proceedings caused by the absence of some of the witnesses whom we wanted to examine, which prevented us doing anything further.

Q. What proceedings in the litigation took place from the termination of that attempt at settlement? A. I think it was very shortly after that that we found two or three gentlemen connected with the company, quite unexpected to them too, and served some kind of papers upon them; I cannot say now whether they were orders for their examination, or simply demands that they submit to an examination.

By Mr. TILDEN:

Q. Was Mr. Durant one of those witnesses? A. No, sir; I think Mr. Dillon was one.

By Mr. PARSONS:

Q. Did you obtain and proceed with the examination of those gentlemen under those papers? A. I did not personally proceed.

Q. Was it done? A. I was going to say I cannot now remember distinctly whether any of my firm did succeed in getting an examination or not; my general recollection is that they succeeded in examin-

ing one or two witnesses who professed to know nothing, but never could secure the attendance of the others.

Q. During what interval did the examination of those gentlemen continue? A. It didn't last very long.

Q. Give your best recollection of the length of time during which it continued? A. I don't suppose that—

Q. I don't refer to the time spent in the examination, but the time spent in the proceeding leading to and until the termination of the examination? A. I have a general impression that it extended over two or three weeks.

Q. And during that time were you active in the attempt to procure the examination of all the parties whose examination you desired? A. I think the office was very active; I think the whole force of the office was employed in the task.

Q. Are you speaking of attempts made by your office, which, in point of time, were subsequent to the termination of the attempt at settlement between Mr. Fullerton and yourself? A. That is my impression about it.

Q. And is it your best recollection that the activity in your office continued for at least two or three weeks, subsequent to the termination of that attempt at settlement? A. I cannot say positively about that length of time; they could not have continued far less than a week after the proposition for settlement was rejected, and yet my impression is that they continued longer, but I would not at all like to assert positively.

By Mr. TILDEN:

Q. Was this anterior to the petition to remove it to the Federal Court? A. Oh, yes, sir; there was no possibility of removing the suit at that time; it was not possible to remove the suit until the company had got legislation from Congress for that purpose.

By Mr. PARSONS:

Q. Are you clear in your recollection that during all this period, embracing, as you think, two or three weeks, subsequent to the termination of this attempt at settlement, your office received no instructions from Mr. Fisk, in any way, to discontinue or interrupt the litigation? A. I am quite sure of that. I recollect now that the legislation of Congress, under which an attempt was made to remove the suit to the United States Court took place, unless I am very much mistaken, after this negotiation between Judge Fullerton and myself had closed. My impression is pretty strong on that, perhaps, because I know Mr. Tracy conducted the proceedings which followed that legislation, and I was left in charge of the office, and that was the first time that I had charge of the case. I took personal charge of resisting the application for a removal. I don't recollect that Judge Fullerton was in town when this proceeding first came on. On the contrary, I recollect pretty distinctly that he had to be sent for from Newburgh by the other side.

Q. Was Mr. Fisk aware of these proceedings on the part of your

office subsequent in time to the termination of the attempt at settlement? A. He may have been, because I presume that we got affidavits from him in order to resist the attempt to remove the suit into the United States Court.

Q. Was he in constant communication with your office in reference to this litigation during this period? A. He was in pretty frequent communication; perhaps not every day, but twice a week, I should think; possibly oftener.

Q. Did Mr. Fullerton appear in the proceeding for the examination of these parties, both the parties whose examination you obtained and those who left the jurisdiction of the Court? A. That I do not know.

Q. Can you tell by looking at the proceedings in the suit? A. No, sir; I should not be able to tell. We do not keep any record of the circumstances.

Q. Can you tell by looking at the order and the statement in the order of the names of the counsel who appeared? A. I might be able to guess from that; I cannot give positive testimony. It is not an invariable rule to enter all the names of the counsel in the order, and as those orders are usually drawn up by clerks, they sometimes enter the names of counsel who do not actually appear.

Q. Will you look at the printed book in the case, and state whether Mr. Fullerton did not appear as counsel for Charles Tuttle on such a proceeding on the 18th of August, 1868? A. I find a copy of an order reciting that fact, but as this order was made *ex parte* when no one from our office was present, I could not pretend to say whether it is correct or not.

Q. Do you remember that Mr. Fullerton did, as counsel, represent those gentlemen, or some of them, whose examination you sought to obtain? A. I can recollect he was employed by them as counsel generally, because he told me so.

Q. Do you recollect his acting for them subsequent to the termination of this attempt at settlement? A. I have an impression that he did so act, but I do not wish to be positive about it. I should be entirely satisfied with Mr. Fullerton's own word upon that point, because I might be mistaken.

Q. Who was the active counsel for the defendants in addition, or other than Mr. Fullerton? A. Charles Tracy was the most active counsel on their side.

Q. From the beginning? A. From the very beginning.

Q. Did Mr. Tracy continue to be an active counsel for the defendants through the active part of the litigation? A. He did down to a certain point, I think in the year 1869, not afterwards.

Q. Did he through the year 1868, and a portion of the year 1869? A. He did.

Q. Do you recollect that after Mr. Fullerton ceased to be so prominent or so active as counsel in the litigation, Mr. Tracy continued his activity? A. I cannot distinctly say that Mr. Fullerton did discontinue his activity, and for that reason I cannot answer your question.

Q. Did he not at one time cease to be active counsel for the defend-

ants, or in their interest? A. Mr. Fullerton seemed to drop out of the case at some time; I think it must have been in the latter part of 1868. That is as near as I can recollect, and Mr. Tracy certainly continued to be active after that time.

Q. Can you state when it was that Mr. Fullerton dropped out, or seemed to drop out, of the case, with reference to the termination of the attempt at settlement to which you have testified; how long after that was it? A. I really cannot say further than this: that that attempt at settlement was made at some time in July or August, and that I think Mr. Fullerton left town immediately afterwards; that he only returned to act in the case when specially called down by Mr. Tracy or some one associated with him, and that by September or October the most active proceedings were suspended.

Q. By the fact of which you have spoken, the absence of the Directors whose examination you were attempting to obtain? A. Partly by that; but I think, now that I recollect the circumstance more distinctly, that it was caused more by certain stays of proceedings that were granted against us by Judges Cardozo and Barnard, which, I think, put a stop to all our activity.

Q. How long did you continue under those stays of proceedings? A. I think for something like thirty or forty days, before Judge Barnard heard the argument of the motion to remove the case into the Circuit Court, and all the time after he had heard that argument until he had decided the motion.

By Mr. TILDEN:

Q. The motion was decided about the 4th of March, 1869? A. Yes, sir, I think that is so. The suggestion Mr. Tilden makes refreshes my recollection very much. I remember now the reason why all proceedings were suspended was that the motion to remove the cause from the State Court to the Federal Court was argued before Judge Barnard early in the Fall, and he did not render his decision until about the 4th of March, granting in the meantime a stay of all our proceedings, so that of course we could do nothing, and did do nothing.

By Mr. PARSONS:

Q. Was that stay a stay granted by one order, or by an order renewed from time to time, granting further stays? A. That I cannot recollect; I should rather think that there was only one order made after the close of the argument. My impression is, that Judge Barnard made one general order staying proceedings until he should render his decision.

Q. Do you remember whether there was any attempt on the part of your office during the period of the stay to procure the decision of Judge Barnard, whether you were pressing him for a decision? A. Certainly I did not, and I do not know that any one connected with our office did. We certainly did not go or send to his house, but it may be that some one in our office may have asked him in Court how soon he would render his decision. We did not press him for it.

Q. Was that stay of proceedings granted by Judge Barnard, and the absence of the Directors, the only causes for the interruption of active hostilities? A. Certainly those were the only causes of the cessation of hostilities, as far as our office was concerned. We knew of no other reason.

Q. Can you give the date of Judge Barnard's order, denying the motion to remove the cause into the Circuit Court of the United States? A. I think it was the 4th of March, 1869; I am not positive.

Q. Will you look at the order in the printed book, and state whether the date was not the 10th of March, 1869? A. The order was entered on the 10th of March, 1869, but the decision upon which that order was based was rendered on the 4th of March, 1869.

Q. Did not Judge Barnard by that order vacate the stay of proceedings which had suspended the litigation down to that time? A. He did.

Q. Did not your office, immediately upon Judge Barnard's vacating that stay, proceed with active hostilities? A. I think we did; I think there was no delay at all.

Q. Did you not, on the same day that the stay was vacated, March 10th, 1869, procure from Judge Barnard an order for an attachment against Thomas C. Durant and other parties for an alleged contempt in violating Judge Barnard's injunction? A. We did.

Q. Did not Mr. Fullerton, in April, 1869, make an affidavit in aid of the attempt by the Company to remove the suit from the State into the Federal Court? A. I do not know.

By Mr. NILES:

Q. State your best recollection? A. I have no recollection. A paper is shown me purporting to show that, but I do not care to put my recollection on the basis of papers. I have no present recollection; it may be that I never saw that paper at all.

By Mr. PARSONS:

Q. Do you remember any participation on the part of Mr. Fullerton in the litigation after Judge Barnard's order of March 10, 1869, vacating the stays of proceedings permitted the litigation to be resumed? A. It is certainly my impression that Judge Fullerton appeared in Court when the attachment was made returnable on the 11th of March, or thereabouts. I am not very positive, but that is my best impression.

Q. During all this period from the attempt at a settlement between Mr. Fullerton and yourself, down to the Summer of 1869, was it ever, to your knowledge, suggested either by Mr. Fisk on your side, or by Mr. Fullerton, or on the part of any person on the other side of the litigation, that there had been any settlement of the suit on the part of Mr. Fisk? A. Never.

Q. Was any such suggestion or statement ever used as an answer or defence to any of the active proceedings on your part? A. Never.

By Mr. NILES:

Q. Was there any suggestion from anybody that Mr. Fisk had received any consideration for delaying the suit till the Spring. A. Never.

Q. Or for delaying it at all? A. Never.

By Mr. PARSONS:

Q. Have you ever heard any such suggestion? A. Never, until I read the newspapers within a day or two.

Q. You mean the newspaper statements of Mr. Fullerton's testimony upon this investigation? A. I do.

Q. Did Mr. Fullerton ever intimate anything of that kind to you, or to any one to your knowledge? A. Not to my knowledge or information.

Q. Was there any intimation on the part of any person of which you ever knew or heard prior to your seeing the account of Mr. Fullerton's testimony, that there was any reason why the litigation either should terminate altogether or should be suspended. A. None, whatever; except that some time in 1869, Mr. Fisk told me that there were propositions for settlement, and that our office had better wait a few days, and see what would come of them, but he told me afterwards that they came to nothing.

Q. When in 1869 was that? A. It was in the Spring of 1869. I should think in April.

By Mr. NILES:

Q. After the injunction against the election? A. Yes, sir; after all the attachments had issued.

By Mr. TILDEN:

Q. Attachments against the Directors? A. Yes sir.

By Mr. PARSONS:

Q. Did you have interviews, during the progress of the litigation subsequent to this attempt at settlement, with Mr. Fisk, of such a character as that, if there had been a settlement by him of the litigation, he was called upon to disclose the fact to you? A. I certainly had constant interviews with Mr. Fisk. During the Fall of 1868, I saw him from two to five times a week, and after that I saw him every day, and we frequently conversed about this suit. I certainly should have expected him to tell me if there was any reason why I should not proceed.

Q. What were his instructions during that period—to suspend or proceed and prosecute the litigation? A. He gave no instructions after Judge Barnard granted the stays of proceedings, after having heard the argument of that motion. Prior to that time he gave instructions to have the stays of proceedings set aside, and go on as fast as we could, and after Judge Barnard vacated his stays of proceedings

in March, 1869, Mr. Fisk gave me personal directions to proceed in the suit with the utmost vigor.

Q. Have you the means of furnishing the Committee with the date when Judge Barnard granted this stay of proceedings? A. Yes, I presume I could find it. The first order of Judge Barnard staying proceedings was made on the 6th of August, and lasted till the third Monday of August. On the 8th of August that stay of proceedings was modified.

Q. On whose application? A. On our application.

Q. For Mr. Fisk? A. For Mr. Fisk, so far as to allow us to obtain the deposition of any witnesses that we needed.

Q. You mean to obtain them compulsorily? A. Yes, sir.

Q. By the proceedings of which you have spoken? A. Yes, sir.

By Mr. TILDEN:

Q. That allowed the proceedings which you have mentioned to go on? A. Yes, sir; with this limitation, that they were only to examine the witnesses on the point to show that the case ought not to come into the United States Court; that is all we expected to do.

By Mr. PARSONS:

Q. What took place on the third Monday of August, as to the stay granted on August 6th, 1868? A. The stay was renewed subject to the same modification.

Q. Can you give the date of the order? A. I think it is the 20th of August; the first stay was granted by Judge Cardozo, on the 31st day of July, 1868.

Q. Was not the stay granted by Judge Barnard, on August 20th, 1868, a stay until the 8th of September? A. It was until the 8th of September, and until the decision of the motion.

Q. Until the decision of what motion? A. The motion to discharge an attachment against Charles Tuttle.

Q. What took place in reference to that motion? A. On the 8th of September, Judge Barnard left an order in Court, stating that on his own motion he adjourned the whole matter until the first Monday in October.

Q. What then took place? A. I cannot positively say whether the motion was argued upon the first Monday of October; it was argued about that time, and then all proceedings were stayed until the decision of the motion.

Q. Is the motion to which you allude the motion to discharge the attachment, or the motion to remove the cause? A. My recollection is that all the motions were argued together.

Q. And subsequent to September 8th? A. Yes, sir; not earlier than the first Monday of October.

By Mr. NILES:

Q. Do you remember whether Judge Fullerton appeared on that motion for attachment against his special client, Mr. Tuttle? A. I do not recollect positively, but my impression is that he did.

By Mr. PARSONS :

Q. And down to the first Monday of October, when the motions were all argued? A. Yes, sir; I think Judge Fullerton appeared on the argument; I cannot be quite positive about that.

By Mr. TILDEN :

Q. On the argument of the question of removal? A. Yes, sir; it was on the first of October; I cannot be certain whether he positively appeared, because he may have only signed the brief used by the defendant in that case.

By Mr. PARSONS :

Q. Do you recollect whether he did sign the brief which was submitted on the first Monday, or early in October? A. I am satisfied he must have personally appeared or signed the brief; I cannot say which.

By Mr. NILES :

Q. Your best impression is that he was present on the argument?
A. That is my impression.

By Mr. PARSONS :

Q. Were there interviews between Mr. Fullerton and yourself down to or about the time of this argument in the early part of October, 1868? A. I do not think there were any more interviews between us after I had reported to him the failure of the negotiation.

Q. Did you appear upon the proceedings in Court, or were they in the charge of Mr. David Dudley Field? A. They were in charge of Mr. David Dudley Field, and I am under the impression that I did not appear in Court. From looking at some papers that have been handed me since I gave my last answer, my impression now is that Mr. Fullerton did not appear upon the oral argument of the various motions, including the motion for removal.

Q. In October you mean? A. I perceive now that that argument was adjourned over finally until December, 1868.

Q. Have you the means of stating how many adjournments of that motion there were until it was finally heard in December? A. I think there were half a dozen adjournments.

Q. Running through what months? A. Running from August to December, 1868.

Q. During all that time was the company, through its counsel, pressing the removal of the cause? A. That is rather a difficult question to answer; the company's counsel claim that from the first moment of their presenting the petition, the cause was removed.

Q. Were they pressing for an order from Judge Barnard, recognizing the removal? A. Well, even that is more than I can say; we were pressing on our side for an opportunity of making an oral argument before Judge Barnard, and the counsel on the other side resisted

that application, and insisted that the arguments should be considered closed.

Q. And did this run through the months of September, October and November, down to the oral argument in December, 1868? A. Yes, sir.

Q. Do you know of any facts justifying the inference, or from which could be inferred that in July or August, 1868, there had been a settlement of the suit with Mr. Fisk, or an arrangement made with him for a suspension of active operations on his part in the suit? A. Of my own knowledge I know of nothing. Upon information I know of nothing except the newspaper reports of Mr. Fullerton's testimony yesterday.

Q. Before this Committee? A. Before this Committee.

Q. What facts are in your possession justifying the contrary inference? A. Nothing except what I have already stated.

Q. Do you mean the continuance of the litigation? A. The continuance of the litigation; the absence of any suggestion on the part of Mr. Fisk that a settlement had been made; the absence of any similar suggestion on the part of the counsel of the Company; the fact that negotiations were renewed at a later period between the counsel for the Company and the plaintiff, or persons representing him, for a settlement, in which no allusion was made by the counsel for the Company to the fact of any previous settlement, so far as I ever heard.

Q. Was there also the fact that Mr. Fisk had refused to accept a proposition to pay \$50,000, made by Mr. Fullerton to you? A. That I have already mentioned; therefore it is not an additional circumstance.

Q. You did not mention it in the summary of the facts, whatever you had previously mentioned? A. You asked me what there was which I had not already mentioned. The facts which I have last mentioned were some that I had not previously mentioned, and for that I specified them.

Q. Are you possessed of any fact, any knowledge or information, from which you have learned or can learn, or from which can be inferred that in July or August, 1868, Mr. Fisk received a sum of \$50,000, or any part of a sum of \$50,000, either to settle the Union Pacific suit, or to forbear the active prosecution of it? A. I make my answer broader than your question; until I read what I have alluded to in the papers I was possessed of no facts, or no information or suggestion which had induced me to suppose that either Mr. Fisk or any other human being had received one dollar for the purpose of effecting a settlement, or stay, or delay, or any interference whatever with the Union Pacific litigation.

Q. Were you during that period very familiar with Mr. Fisk's transactions? A. I was very familiar with Mr. Fisk; I could not say that I was with his transactions. I never saw his books or accounts at all, or knew what his payments were.

Q. I refer to his transactions in Court, or in litigations—his legal business? A. I was very familiar with his legal business.

By Mr. NILES:

Q. Was he in the habit of making settlements or seeing to stays in any litigation you had without your consent, or consultation with you? A. He was not in the habit of doing so without communicating to me afterwards. He made settlements sometimes, and told me after he got through.

Q. Neither you nor your firm ever saw or heard of any part of that money, so far as you knew? A. Oh, no. I know for myself, and I am equally certain as to my partners. We never should have gone on with the suit if we had supposed so.

By Mr. FLAMMER:

Q. After Mr. Fullerton failed in negotiating a settlement either of the case, or for a suspension of hostilities in the case, did he inform you of an attempt to effect such a settlement with Mr. Fisk and himself? A. He did not.

By Mr. NILES:

Q. Please look at the original papers in the case of Nyce against the Erie Railway Company and others, and state whether you know the handwriting of either of said papers, or of any part of either of said papers, and if yea, in whose handwriting are they, or is it? A. I do not know the handwriting of any part except a few lines that seem to be in the handwriting of James A. Morgan.

Q. In which of the papers? A. In the complaint.

Q. That is the last four lines of the complaint? A. Paragraphs four and five of the complaint. The endorsement appears to be in N. Millard's own writing.

By Mr. VAN COTT:

Q. Who is James A. Morgan? A. He is a lawyer; he has an office in 229 Broadway.

By Mr. NILES:

Q. You mean the same lawyer who went for you in Brooklyn? A. No, sir; he is no connection. The one who had some connection with the Erie Railroad is William H. Morgan.

By Mr. VAN COTT:

Q. What connection had James A. Morgan with the Erie Railway Company at that time? A. I do not know what he had at that time. He was for a short time a clerk in the law department. He was there experimentally, but he went into business for himself at 229 Broadway, and has been there for some years.

Q. Do you mean about the time of the swearing to the complaint in Nyce vs. The Erie Railway Company, Heath and others, he was a clerk in the law department of the Erie Railway Company? A. I cannot say that; I do not recollect what time he left, but if he had left then he had probably not left very long before.

Q. How long before, if before? A. I should not think before two or three months before that time.

By Mr. NILES:

Q. How long had he been there? A. About six months.

By Mr. VAN COTT:

Q. In how many places does Mr. Morgan's handwriting appear in the original complaint and papers attached, taken from the files of the county clerk's office, and shown you? A. It only appears in nine lines.

Q. Of the complaint? A. Of the complaint, or any of the papers.

Q. The nine closing lines of the complaint. Is that so? A. Excuse me, I did not notice it before, but I see there are three or four pages in his handwriting.

Q. Three or four pages and nine closing lines? A. Yes, sir.

By Mr. VEDDER:

Q. Did you inform Mr. Fisk as early as August, 1868, that hostilities could not be resumed until after the stay of proceedings had been vacated? A. Yes, sir.

Q. This stay was granted first on the 31st of July, was it not, by Cardozo? A. Yes, sir.

Q. Was Mr. Fisk informed, soon after that, of the same facts? A. Almost directly: upon the same time on which the stay was served.

By Mr. NILES:

Q. Please state of how many pages the complaint consists, and how many pages are in Mr. Morgan's handwriting, and which pages in the order of the complaint they are? A. There appears to be twenty pages to the complaint. Mr. Morgan's handwriting appears to occupy from the 7th to the 15th pages, both inclusive, and a small portion of the last page. I wish, as I have been questioned about it, to make an explanation, that I knew nothing whatever about this suit, and had no part whatever in its preparation or defence. I had nothing to do with it, directly or indirectly. It appears for the first time to my knowledge that a gentleman, who had been a clerk in my office, copied a portion of those papers. I presume he did not know what he was writing, because he copied out of the middle of the complaint, and I suppose he did not know at all what he was doing. It might look as if I had some knowledge of it, but I had not, directly or indirectly, any part or lot in the matter.

Q. Was he not an attorney, admitted to the bar? A. He was before he came into the office.

Q. And when he left the office he went into practice for himself? A. Yes, sir; and what business he had I know nothing of whatever.

Q. When you say "copied," you do not mean to distinguish that from drafting this complaint? A. Yes, sir, I do; my impression is decidedly that he could not have drafted any portion of it; he was a young man, and I presume he was employed by some one to assist

merely in copying. I had no idea that he drafted even a portion of that.

Q. You do not know whether he copied it or not? A. I know enough of his experience. He was quite a young man, and not of sufficient experience to draft such a paper.

Q. Do you know that he ever had any connection with N. Millard in business in any way? A. I do not know whether he had or not.

By Mr. FLAMMER:

Q. What paper did you read Mr. Fullerton's testimony in—the *Times* of to-day? A. No, sir; it must have been the *Tribune* of this morning.

Q. Now that you have read the account in the *Tribune* of Mr. Fullerton's testimony, did any fact or circumstance, or facts or circumstances recall, or does such reading suggest to your mind anything from which you would infer or presume, or could infer or presume, that an arrangement between Mr. Fullerton and Mr. Fisk was entered into by which hostilities were suspended, or were to be suspended? A. Of course, I infer from reading that testimony—

Q. Does the reading of this testimony recall any fact or circumstance to your mind independent of the testimony? A. Nothing whatever outside of the testimony itself.

By Mr. NILES:

Q. I understood you to say that away down to December your folks were pressing Judge Barnard to action, as if the case was still in his Court. Is that so? A. "Pressing" is a strong word.

Q. You were going on? A. We continued our application for an oral argument.

Q. And you claimed that it had not been removed properly? A. We did.

Q. And tried to impress that upon his mind, and tried to get him to act on that basis? A. That is saying too much. Precisely what we did was to appear on various adjournments, and I may say the adjournments up to October were not particularly opposed by us simply for the reason that Mr. David Dudley Field took the main charge of the case, and he spends the Summer in Stockbridge. He did not want to come down before October, but was willing if necessary, so that we did not press Judge Barnard really until October. In October we pressed to a certain extent to get an oral argument.

Q. And opposed the adjournment? A. And opposed the argument, but I do not think we did so with any very great persistency, but that is not because we were aware of any particular reason for doing so. We saw no reason for driving the case violently.

Q. From that time had you noticed any change in the willingness or readiness of Judge Barnard to allow the case to be brought in and heard? A. After what time?

Q. After the 1st of October, or after the last of August? A. No, sir; I noticed no change in Judge Barnard.

By Mr. VEDDER :

Q. Did the attorneys on the other side appear at these various adjournments? A. Yes, sir.

Q. What did they want to do? A. They wanted the case to be considered as all over, done with. They insisted every time that we were not entitled to any adjournment or hearing.

Q. On whose application were the adjournments granted? A. They were granted in this way. We insisted upon our right to an argument. They denied that. The Judge holding every time that we were entitled to an oral argument, they said it should be adjourned.

Q. Really the motions were upon the motion of the attorneys on the other side? A. They were, although they did not want really to have the case adjourned. It was a curious position of affairs.

Q. Were these adjournments ever made upon the suggestion of the Court except once—any other than that upon the suggestion of the Court? A. Only one instance that I know of, when the Judge was away. I never noticed anything in the Judge's manner at all that indicated any change whatever.

Adjourned till Saturday, March 23d, 1872, at ten o'clock.

NEW YORK, March 23, 1872.

The Committee met at 10 o'clock.

Present—Messrs. PRINCE, NILES, VEDDER and TILDEN.

FRANK P. BLAIR, a witness, being duly sworn, testifies :

By Mr. PARSONS :

Q. Have you come from Washington on a subpoena from this Committee? A. Yes, sir; I received a subpoena from this Committee and came on in obedience to it.

Q. Have you, on any occasion, met Judge George G. Barnard, of the Supreme Court of the State of New York for this District? A. Yes, sir; I have frequently met him.

Q. Did you have an interview with Judge Barnard, at the Astor House, in the Spring of 1869? A. I remember to have met the Judge at the Astor House—I think it must have been in the Winter. It must have been previous to the Spring, a short time, in 1869. I cannot fix the date exactly; I know that it was while I was Commissioner of the Pacific Railroad, and I know that I was not Commissioner of the Pacific Railroad after March, because I was turned out by the President, immediately after his inauguration.

Q. Was anything said in the conversation then had with Judge Barnard, about an injunction he had issued restraining the election of the Directors of the Union Pacific Railroad Co?

A. According to my recollection, I was in the lunch room of the

Astor House ; Mr. Cornelious Wendell was one of the persons present. There were a number of persons there whose names I do not recollect, and some of whom I had been introduced to before Judge Barnard came into the room.

Q. I desire to fix the date if I can. I will ask you whether, in the interview, anything was said about an injunction having been issued by the Judge? A. I do not know that I could call it an interview. Judge Barnard came into the room and commenced a statement in regard to an injunction or order which he had issued restraining the stockholders of the Pacific Railroad Co. from an election of their officers.

Q. Will you state whether, according to what Judge Barnard said, the injunction had been issued prior to the day of your interview or the date of this conversation? A. Yes, sir ; he said distinctly that he had issued an injunction.

Q. According to that statement, this conversation was subsequent to the date of that injunction? A. It was on the same day. I understood him to say that he had issued the order—he was speaking to all the persons present—a number of them—and he described the consternation that his order created among the parties interested in the road—stockholders and others.

Q. State all that you remember to have occurred on that occasion, beginning at the beginning? A. What struck me and arrested my attention, was that I was, as I have already described, interested in the road, as being the Commissioner upon it. This process was entirely new to me ; I had never heard of it before. He came into the room and commenced talking about it. I do not know whether any one asked any questions about it or not, but he commenced to give his description of it, and rather an amusing description, the way he gave it.

Q. State as well as you remember what he did say? A. I cannot exactly say what he said, but the purport of it was, that he had issued such an order, and that it had fallen like a bomb shell upon them ; that they were not prepared for it, and there was great consternation. He wound up his statement of what he had done, and the effect of his action upon them, by something in the nature of a threat that he would drive these parties out of the city as he had driven other persons of another corporation or Directors of some other Company—I do not remember what Company or whether he named any particular Company that he had driven out of the city. I was not sufficiently familiar with the facts to know, but I remember that statement.

Q. Will you state, as near as you can remember, the language used by Judge Barnard when he spoke of driving these parties out of the City of New York? A. I think I have stated as well as I recollect. He said he would drive out these parties.

Q. What did he call them? A. I believe he said rascals, or scoundrels, or something of that sort.

Q. Did he apply any other epithet to them? A. I do not remember whether he did or not.

Q. Was it from the City or the State of New York he said he would drive them? A. I do not remember, distinctly, whether he said the State or City, but my impression was that he meant to drive them out of the State.

Q. Do you recall anything else which occurred on the occasion? A. That is, I think, substantially, as well as I recollect, all that occurred.

Q. Who else were present—who were in the room besides Mr. Cornelius Wendell? A. I would not undertake to say, but I think some of them were members of the Legislature. I think I was introduced to them as members of the Legislature, but their names I do not recollect. I might recollect the gentlemen if I saw them. There were a number.

Q. Have you stated in what part of the Astor House this took place? A. It was in the lunch-room, I think, on the same floor with the office, and very near it.

By Mr. ANDREWS :

Q. Room No. 5? A. I believe it is room No. 5 ; it is used as a lunch-room.

By Mr. PARSONS :

Q. Is there a bar in the room? A. Yes, sir ; there is a bar in the room.

By Mr. CURTIS :

Q. What was Judge Barnard's manner in this conversation? Was it a serious manner, or a jocose? A. Well, sir ; his manner, when he commenced talking about it, was so jocose, that I recollect it made us all laugh very much. We were amused. I was interested in what he said. What he said took much longer to say than I have taken in giving the substance of it. His manner was rather grotesque, so much, that I confess I was in doubt whether he was serious or not, and I considered the matter. This railroad was a great enterprise, on which the nation or the government had lavished enormous sums, and I was very much interested in its success. It was a question with me whether I should make known to the parties who had control of it—who were building it—the threat—whether it was my duty or not ; because I doubted, from his manner, whether he was really in earnest or not. But I concluded it was a proper thing for me to put them on their guard, and I did so. I did so from the fact that I thought it was not an interest that ought to make a foot-ball for officers in this State, or by any other persons, and I communicated what took place to the persons—the former Directors of the road, with many of whom I was acquainted, and told them, as near as I could, the manner, and

everything else, of the conversation, that they might act upon it as they saw best for the interest of the road.

Q. Did you communicate it to Mr. Durant? A. I will not be certain to whom I communicated it, but I knew Mr. Bushnell, very well. I am in doubt whether I spoke to Mr. Bushnell, or Mr. Durant, or Mr. Duff—John Duff. I have known Mr. Duff for a great many years; he is from Missouri, and is engaged in enterprises there. But one or the other, I mentioned it to, of these gentlemen.

Q. You were in doubt whether it was a serious threat on the part of the Judge? A. I certainly was.

Q. Were you ever present in any proceedings in Court in relation to this controversy? A. No, sir.

By Mr. PARSONS :

Q. Can you fix the hour of the day when this conversation occurred? A. It was in the afternoon. I think it must have been after three o'clock.

Q. Did you say that he spoke of the injunction as having been issued that same day? A. Yes, sir.

Q. The morning of that same day? A. Yes, sir.

Q. Did Judge Barnard state to you how he had learned the consternation that had been produced by the service of the injunction? A. I think from the report of officers who had served it. I would not undertake to say whether he mentioned it or not, but that is my impression, that the officer had reported it to him.

Q. Did you say that the injunction had been served at a meeting either of the Directors or stockholders? A. As I understood it, the election was either proceeding or about to proceed when the injunction was served, and there had been no election. It had probably begun—probably they were in the midst of the election.

Q. And was it the parties who were about to proceed with the election of whose consternation Judge Barnard spoke? A. Yes, sir; the parties were collected there to participate in the election.

Q. Did he describe, with particulars, their consternation? A. Yes, sir; he gave a very ludicrous description.

Q. In detail? A. In detail.

Q. Was that the part of the conversation which you have spoken of as jocose? A. That portion was certainly. I was only attempting to convey my impression about it—the whole of it, when I remarked that I was in doubt as to whether I ought to put these parties on their guard. I was in doubt whether he was in earnest or not in the threat which he made. The previous portion of his conversation, with the description of what occurred there, was very ludicrous. That was jocose as a matter of course. I was in doubt whether he intended to carry out the threat with which he followed, whether he was jocose or in earnest in regard to that. I made up my mind that it would do

no harm to let them know the threat had been made so that they might take what course they deemed best, and thinking that they would be better able to appreciate it then and would know whether they should take any precautions, or whether there was anything in their power they could do to protect the interest of the road.

Q. Was there anything jocose in the way he made the threat? What was his manner in that part of the conversation? A. I don't think that either the words or the manner of that portion of it could be called jocose.

Mr. TILDEN :

Q. You are unable to fix the date of this transaction except by your memory that it was on the day or immediately after the service of the order of injunction? Do you remember when the election day was? Are you aware what day it was? A. No, sir, I do not recollect the day of the election. I fixed the date of my recollection of the Judge's statement that upon that day they were attempting to hold an election, and that he had retained them by the order.

Mr. TILDEN :

It is in evidence that the election was on the 10th day of March. It is proper that the witness should be informed of that.

Mr. PARSONS :

I understand the date as fixed by the witness to be the afternoon of the day of the election.

Mr. TILDEN :

He spoke somewhat in doubt whether it was before the 4th of March.

THE WITNESS :

I didn't intend to convey that idea. I remarked that soon after the 4th of March I was turned out of the position I had held. I had not received information of it at the time this occurrence took place.

By Mr. PARSONS :

Q. You spoke about being removed as Commissioner? A. I say I had no notice of my having been removed at the time, but I was turned out by General Grant, soon after the 4th of March. I did not receive information of it until I returned home. I got the information on my return home.

Q. Was that after this conversation? A. I returned home after this conversation, of course. I was here in the city at the time this conversation occurred.

By Mr. CURTIS :

Q. Explain what your precise relation to the Pacific Railroad was ? A. The law provided that there should be three Commissioners appointed by the Secretary of the Interior to examine the road, the sections of the road, when completed, and to certify to their construction being in accordance with the law of Congress, and upon this certificate the bonds of the United States were issued to the Company.

Q. So far as you knew, at that time, you still stood in that relation ? A. Yes, sir.

By Mr. VEDDER :

Q. Was what you have said of the conversation with Judge Barnard carried on uninterruptedly by him until its close, or were there interruptions ? A. There were some interruptions, but none of any great importance. He was describing this matter, and told what occurred. There may have been some interruptions. I do not remember any. It is very likely that questions were asked.

Q. Was there much laughter by these parties to whom he was telling this ? A. We were all very much amused at it.

Q. Do you remember whether or not that his boast or threat of driving these parties out of the State was made in response to something that was said by somebody present, or was it an independent declaration ? A. I do not remember whether it was or not ; it might have been.

Q. Can you remember what he said just immediately preceding these expressions ? A. No, sir, I do not recollect exactly. I have given, substantially, all that I recollect of the occurrence.

Q. Do you remember now, whether, when any one did say anything in response to what he was saying, they said it in a jocular manner ; whether, if any replies, in response, from those to whom he was telling this were made, they were said in a jocular manner ? A. I think that most that was said was in the way of interrogations. They asked him about something or other, and he would go on and continue his description.

Q. That would raise a shout of laughter ? A. Yes, sir ; there was a great deal of laughter at the description which he gave, and which, according to my recollection, were very ludicrous descriptions.

DANIEL P. INGRAHAM, a witness, being duly sworn, testifies.

Mr. CURTIS :

No announcement has been made to us in regard to the decision of the Committee in respect to matters occurring before Judge Barnard's present term of office. We have not had any

definite information on that subject. We have asked Judge Ingraham to attend here to explain the facts which relate to something that occurred in 1868. Are we to understand that the Committee do not propose to draw any line?

Mr. PRINCE :

I had supposed that the decision was promulgated the evening it was made. The Committee decided to receive the evidence without regard to the time, but, of course, during Judge Barnard's term of office as Judge of the Supreme Court.

Mr. VEDDER :

I had nothing to do with the decision of this question, for I was not here then. But, if that is to be the decision of the Committee, I would like that the defence in this case should give us the dates of these different transactions.

By Mr. CURTIS :

Q. You are the presiding Judge of the General Term of the Supreme Court in this district? A. Yes, sir.

Q. Do you recollect, in 1868, having a case before you in relation to a divorce between Mrs. Thomas C. Fields and her husband? A. I recollect a motion that was made before me at Chambers. I believe that was the only time I ever had the case before me.

Q. That was a motion for what? A. A motion, I think, for alimony.

Q. Alimony strictly? A. Alimony and counsel fees—I think one of the ordinary motions. I do not remember now the particulars of the motion, but that is my impression, that it was for alimony and counsel fees.

Q. Were you, at the time the motion was made, holding Chambers? A. I was assigned to hold it, and was holding it regularly.

Q. Do you remember on what papers the motion was made? A. I cannot describe the papers. I remember this; I can give you a history of it in a few minutes.

Q. If you please. A. The motion was made on the part of the plaintiffs—I think Marsh & Wallis were the counsel—and the motion was argued before me. I took the papers, expressing at the time my doubts of the propriety of granting it on these papers, and I decided to deny the motion, but gave them leave to submit other affidavits. That was about the close of my assignment to hold Chambers. It was in the month of June, 1868, I think—was it not? I think it was in June, 1868, a little before the vacation commenced on the first of July. I arranged to have Judge Barnard take care of the Chambers for two or three days, in order that I might attend to some private business, that I might go out of town. My health was not good. I was anxious

to get away. On Friday, I think—it was either Thursday or Friday—it was the 30th day of June—I think the last day of June—I went down to Chambers in the morning, to finish some papers—dispose of some papers that I had in my possession, and it was then arranged that Judge Barnard would come in at 12 o'clock, and take charge of the business, and let me go. While I was there, the counsel on this motion came in again with new papers, and proposed to submit them to me.

Q. To you? A. To me. I objected, and I think I said to them—I am very sure I did—that I was going away that day, and didn't intend to hold Chambers, and had arranged with another Judge to do so. They handed up the papers. There was no discussion whatever. I laid the papers on the desk in front of me.

By Mr. PRINCE :

Q. Was Judge Barnard on the bench at that time? A. No, sir; he was not there. Then I left the papers lying on the bench. There were several other papers handed in in the same way—*ex parte* papers for orders, and some orders for attachments. In a few minutes afterwards, Judge Barnard came in and took my place, and I delivered him the papers lying on the desk to finish them. These were all *ex parte* papers—these papers lying along there, and these papers referred to were among them. I was anxious to get away, and I had a good deal to do to get away, and I could not take any orders with me, because I intended to go to Nova Scotia, and did go afterwards, on account of my health. These papers were referred, with others, to Mr. Justice Barnard. There was no discussion before me whatever on these new papers, nor were they opened and read by me. They were merely submitted. I think the counsel stated that I had directed them to be submitted to me. My answer to him was, that I had not directed them to be submitted to me, and I objected to taking them.

Q. Do you recollect the grounds upon which you held on the papers that were presented to you, that there ought to be no allowance for alimony or counsel fees? A. Yes, sir; I have an indistinct recollection; I cannot speak with any certainty about it. I think the reason was, that they did not produce an affidavit, on the part of the plaintiff, to show that she was entitled to it. I think so. I think there was a want of affidavits, on her part, in the motion. I am under the impression that it was made on the pleadings. At any rate, it was made upon what I considered insufficient papers for the plaintiff.

Q. At that moment, when you left the Court and turned over the papers, lying on the table, to Judge Barnard, did you have any conversation with him about the case? A. Not one word, except what I have said.

Q. You simply turned over what remained on the table? A.

Ex parte papers, which had not been discussed at all before me, and which I supposed were not at all important, because I always have supposed—that is the universal practice of the Judges in our Court—that any Judge could assist another in regard to submitted papers.

Q. Did the case come into Judge Barnard's hands for any other reason than because you were going out of town, and could not attend to it? A. No, not that I know of.

By Mr. PARSONS :

Q. Was it not upon an application for the final decree that the papers were brought before you? A. That I cannot answer.

Q. Do you not recall that Mr. Rapallo, to whom it had been referred to take proof of the acts of adultery, had made his report, and that this application came in upon his report and other papers? A. I have an impression that there was a separate application for alimony. I think the two were separate. I have an indistinct recollection of that. I have never seen the papers since, nor has it ever been called to my knowledge, except when I have heard it spoken of now.

Q. Is it your recollection that this application was for alimony and counsel fees pending the suit? A. If it had been for a counsel fee, it must have been pending the suit, or which had accrued during the suit. I am not confident as to whether it was for the final alimony. I do not think it could have been for final alimony. I would not have entertained it for a moment if it had been, for the reason that I have always adopted the rule that the judgment on the report of the Referee, where an answer has been put in, must be carried to a Special Term, and cannot be heard at Chambers. If it had been upon the report of the Referee, or the pleadings, I do not think I should have entertained it at all. I do not think the Chambers is a proper place for such an application.

Q. Do you know whether there had been any answer in the suit? A. That I do not know.

Q. You spoke of having decided against the application? A. That was when it was discussed before me.

Q. With leave to renew upon further papers? A. Yes, sir.

Q. Was this decision of which you speak announced in any way, and was any order entered on it? A. It was announced to the counsel. I do not know whether they took out an order. They knew it, and they came forward with a further affidavit on that decision.

Q. There was no new motion. Was not the additional motion on the preceding papers? A. I considered that as disposed of by me. They took the papers, and they came, on the subsequent day, and said they had prepared affidavits, and wanted to hand them in.

Q. Can you remember whether there was any new motion, or

notice of motion, or was the motion made on the original notice?
 A. That I cannot tell. I do not think it was opened; never before me.

Q. You mean upon the second application? A. On the second application. I think the papers were handed in with the remark that they had obtained the affidavits.

Q. There were affidavits on the application—the previous motion? A. Yes, sir. I am pretty sure that these affidavits were not read to me. They were handed up to have me take and examine them.

Q. Have you no recollection of what the paper was that was to be supplied? A. No, sir. It was an affidavit, I think, on the part of the lady.

Q. More than one affidavit? A. That I cannot tell.

Q. Was it an affidavit the want of which you yourself had suggested? A. Yes, sir. I refused to grant an application, whether it was a final judgment, or whether it was a motion, without an affidavit, such as was required, and handed up afterwards, showing—I think there was some allegation, if I am not mistaken, on the first papers, that this lady had means of her own. You know this was four years ago, and it is exceedingly difficult to remember proceedings on an ordinary motion—exceedingly.

Q. What we are trying to get at is, the character of your recollection. A. That is my recollection. There were some objections that she had property. It didn't appear that there was any necessity for her having this alimony.

By Mr. CURTIS:

Q. And that he had none.

Mr. PARSONS:

I prefer to have the recollection of Judge Ingraham? A. No, I do not think there was any affidavit on his part at all, any more than on hers, when it came before me. The papers would not have gone into anybody else's hands if I had not been going out of town at the time.

CHARLES F. WETMORE, a witness, being duly sworn, testifies:

By Mr. CURTIS:

Q. Were you connected, as counsel or attorney on either side, with the case of Shepherd agst. Duff? A. I was both attorney and counsel for Mr. Duff.

Q. What was Mr. Duff's interest in that controversy? A. Mr. Duff had loaned some \$75,000 to a man by the name of Thompson, in the way of United States bonds. Thompson had failed, and made an assignment of his property to a man by the

name of James G. Tighe ; that was in December, 1865 ; about two years after that, a man by the name of Griffin commenced a suit against Thompson, and got judgment for 5,500 and odd dollars—two years after this assignment had been made, and also after Mr. Duff had bought at public auction some real estate in Brooklyn, he being the highest bidder—some two years previous to that, and had paid the money, the auctioneer's fees, and the balance in money, which was to make the purchase perfect, and had recorded his deeds. Some time, I think in December, 1871, I may be mistaken as to the date, but about that time, Mr. Duff called upon me, saying that he had been called up on a proceeding, as being a third party holding property in his possession belonging to Mr. Thompson, on behalf of Mr. Griffin. I appeared for Mr. Duff. Mr. Compton was the person who had obtained the examination, and who appeared as counsel for Mr. Griffin. He commenced the examination. I endeavored to stop it, on account of its being irregular, but Mr. Duff stated to me that he preferred to have the whole matter disclosed, and he stated all the facts, the moneys that he had loaned them, when he had loaned them, and the amounts, and the amount that was still unsecured, about \$25,000. After this was done—while this examination was going on—a boy was sent up by Mr. Compton to serve a summons on Mr. Duff, which was this case of Shepherd agst. Duff, Thompson and Tighe. After this examination was closed, Compton volunteered to say that he was satisfied that there was no reason for examining Duff, or for the suit, and that he would consent to a discontinuance, and to have an order entered discontinuing the suit, because there was no cause of action. So Mr. Duff left. I took the papers, supposing a discontinuance would be made, but instead of that he served a complaint, which set forth all these facts, and also set forth the assignment, and set forth in the assignment that there was \$86,000 which had been converted into cash by Tighe, and was in his pocket, and that Duff had got real estate worth \$150,000 ; that it was by collusion, fraud and corruption, for the purpose of cheating and defrauding the creditors of Mr. Thompson, so that Mr. Thompson might distribute his property to suit himself, and not let the creditors get it ; and he asked for a Receiver and an injunction. Then, in another part of the complaint, he set forth that Mr. Duff had loaned \$40,000, but that he had loaned it on usurious interest. The complaint was very conflicting. I put in an answer for Mr. Duff, setting forth all these facts just as he had sworn to them, as to the amount of moneys he had loaned—this sale of real estate at auction in Brooklyn ; how much it had paid him ; paying auctioneers' fees, and the moneys for the purpose of completing the sale, and recording of his deeds, and that it took place about two years before this judgment was obtained against Thompson.

After this was done, Compton moved for a Receiver. I opposed that before Judge Sutherland.

Q. Who was Compton? A. He was the attorney of Shepherd, the plaintiff. We opposed that before Judge Sutherland, and Judge Sutherland denied the motion. Then he moved to strike out all that part of my answer which set forth what Duff had loaned, and all the facts and circumstances. That came up before Judge Sutherland, and that was denied. Then he moved for an injunction before Judge Ingraham, and that was denied. That was on his own papers. Then he called on me several times, and said he did not want to make any money out of Mr. Duff, but he would like to have me join him in compelling Tighe to pay the money. I told him I could not do that. I noticed the case for trial twice. Finally, Mr. Duff urged me so much, saying that he did not want to have such papers against him, that I noticed it and put it on the calender myself, Compton not doing it; and I told Compton that I had done it, and told him, as near as I could judge, that the case would be up on such a day, and that he must be there. He came to me two or three days before this, and said he would like to let the matter stand, as far as Duff was concerned, and do nothing about it, leaving it just as it was, and go on and see if he could not get his money out of Tighe, and if he could not do that, he would come back on Duff. I told him that I could not consent to any such arrangement; that he must be ready on the day. I subpoenaed our witnesses, and had them all there. We were there two days before the case was reached, and he was there all the while. When the case was called, he said "ready" and we said "ready."

Q. Who was the Judge on the bench? A. Judge George G. Barnard, the gentleman present here now.

Q. Then holding what? A. The Special Term of the Supreme Court of this district. Compton did not ask to have it stand over. He did not ask to have anything done except to go on with the trial, and I supposed we were all ready, and we stepped forward to try the case. He said he wished to abandon all charges of corruption there against Mr. Duff, and finally, upon further consultation, I believe with myself—he had no witnesses present—he concluded that he would consent to dismiss the suit as against Mr. Duff. I was willing to do that, but I insisted that I ought to have some costs, and not only that, but an extra allowance. I insisted upon it. I urged it, and stated my reasons. I read the complaint that had been served, and stated all the facts I could about it, showed the Code, and after perhaps a half an hour, Judge Barnard granted an allowance to Mr. Duff of \$1,500, which I thought was very small, for the reason that the claim he had made involved \$150,000 of real estate, and also \$86,000 in cash. I was willing to take that. Then Mr. Tighe insisted that he was entitled to dismiss the com-

plaint on the ground that, inasmuch as conspiracy was charged and Duff was left out, he being one of the conspirators, the conspiracy fell, and the complaint must necessarily go. There were a great many other facts which he set forth in insisting that it should be dismissed. After some time that was dismissed, and then he moved for an extra allowance. After hearing the statements on both sides, Judge Barnard laid the matter over, stating that the next morning, if they would be in with affidavits, he would see what he could do. The next morning we did come in with affidavits, and we had an argument. And the result was, Judge Barnard granted \$1,000 to Tighe and Thompson, and judgment was then entered on due notice. Then Mr. Shepherd employed Judge Nelson to appear, to see if he could not get rid of these allowances, and he made an affidavit, and they applied to Judge Barnard, I believe, for an order to show cause, and he granted it, staying all proceedings. After some time, that was argued by Judge Nelson and myself, and Mr. Davis, on behalf of Tighe and Thompson, and the motion was denied with \$10 costs, and then judgment was entered.

Q. Then the allowance stood confirmed? A. Yes, sir. Then, after judgment was entered, Compton got another order from Judge Barrett to show cause why he should not have a stay of our proceedings until he could appeal, to see if he could not get rid of these allowances; that was the great question. The motion was argued before Judge Barrett, the sole question being as to the propriety of these allowances. The argument was full. I submitted authorities to him, and, after hearing the argument, Judge Barrett said it was correct, and he denied the motion. Since that time there has been nothing done in the shape of appeal or anything else, except that after execution had been returned *nulla bona*, I thought I would call up Mr. Shepherd and see if I could get any money. I called up Mr. Shepherd, and I saw he was entirely without means and entirely unable to pay a dollar. Mr. Shepherd stated to me that he was brought into this without knowing what he was doing; that he was informed by Mr. Compton, at the time that he swore to the complaint, that it was all right, and he swore to it supposing that he had sworn to the complaint on information and belief, and the information and belief given to him was by Mr. Compton, who stated that it was all right. I showed him the complaint; that it had been sworn to absolutely, and without information at all. He said he did not know one word in regard to it; that he did not know when the suit came up to be tried; that he did not have witnesses, and had nothing to do about it. He also swore, in his application before Judge Barrett, that Mr. Compton assured him, when he was swearing to the complaint, that it would be nothing if he lost, and would not amount to anything; that it was a mere matter of form, and that he would never be involved in any costs. Mr. Shepherd felt very hard

towards Mr. Compton about it. The last I heard of Mr. Shepherd he was sick in bed, not expected to live, with pneumonia.

Q. In your judgment was not the suit a piratical suit, on the part of Mr. Compton, the attorney? A. Yes, sir, most decidedly.

Q. Do you know of any reason why the allowances granted to the several defendants in that case were unreasonable and improper? A. No, sir; I think I ought to have had more.

Q. What did you ask for? A. I asked for \$5,000, and I tried very hard to get it, but I failed.

Q. Considering the amount in controversy, or the amount which, according to the pretended merits of the claim, of itself, the defendants would have been responsible for if judgment had passed against them, and considering the trouble that their attorneys and counsel had, would \$5,000, if it had been granted, been an excessive allowance? A. I think not.

Q. Do you know anything of an article in the *New York Times*, attacking Judge Barnard, immediately after this suit was ended? A. I know there were two in the *Tribune*.

Q. Do you know whether they were written, or caused to be printed, by Compton? A. I do not; I could not find out; I went to the *Tribune* office, but they would not tell me; but they told me they were prepared and delivered to them by some eminent lawyer at the Bar. I told them that what was there printed was untrue, and I took over a certificate from the Clerk present at the time, stating that it was not true, and asked them if they would not correct it; they said they would show it to the eminent counsel who furnished the information. I have never heard anything further about it, and no correction has been made, to my knowledge.

Q. You never saw any? A. No, sir.

Q. You never heard of any? A. No, sir.

By Mr. PARSONS:

Q. You used the expression that the amount due Mr. Duff, which remained unsecured, was \$25,000? A. So Mr. Duff stated.

Q. What was that amount; was it the amount that remained due to him from Thompson? A. Yes, sir; he said that he had loaned \$75,000, and stated how he loaned it; it is in the answer which I have in my pocket, and which I will show, if you like.

Q. He had credited against that debt the amount at which he took the real estate? A. No, sir; he had paid cash for the real estate.

Q. How did that reduce his debt? A. I do not know that it did; I never inquired into that at all; all I know is, the amount he stated was \$75,000 that he had furnished; then he stated, also, what he gave for the real estate when it was bought at auction, \$11,000 and odd, and that he had paid on that pur-

chase some \$1,400. I think he paid into the auctioneer's hand that day the per centage, and he said to me that, over and above all that he could possibly secure, there was \$25,000 cash loaned that he could not get back.

Q. Was the difference between the \$75,000 due and the \$25,000 remaining unsecured made up to him by this real estate which he had obtained? A. I do not know.

Q. Was that your understanding of the case? A. Yes, sir; but I do not know positively. That I did not pay any attention to particularly.

Q. Is that the real estate which, on your examination by Mr. Curtis, you testified was worth \$175,000? A. What they said was worth \$150,000 in Compton's complaint. I do not know anything about the property. I never saw it, and do not know what it consists of, except that it was real estate in Brooklyn.

Q. Was there any evidence of the value of that real estate furnished to Judge Barnard when he made this allowance? A. Nothing except what Mr. Compton stated.

Q. Did you say the real estate was worth \$150,000? A. I said that he said it was worth \$150,000 in his complaint.

Q. Did you state that it was urged before Judge Barnard that it was worth that? A. No, sir. It was for the purpose of showing him that I ought to have a larger allowance.

Q. Did the plaintiff have any case against the defendant in that suit? A. I never thought he had,

Q. What other counsel appeared on the trial besides yourself? A. Mr. Tighe appeared for himself and Thompson, the other defendant. He is a lawyer in the office of Judge Troy, in Brooklyn.

Q. Was the \$86,000 of which you speak the amount which the plaintiff claimed had gone into the hands of Tighe as assignee? A. Yes, sir. The matter in the complaint was that the \$86,000 had been reduced to the possession of Tighe, and converted to his own use for the purpose of cheating and defrauding the creditors.

Q. What was the relief sought against Duff, any other than to set aside the purchase of the real estate? A. To set aside the purchase of the real estate, to set aside the assignment, to have a Receiver appointed, and an injunction; and to take possession of the property that Thompson had assigned to Tighe, and that had passed into the hands of Tighe and Duff.

Q. Had any of the assets of the estate passed into the hands of Duff? A. Nothing except this real estate that he purchased, that I am aware of.

Q. Did the complaint seek anything from Duff except to set aside the sale of the real estate to satisfy the plaintiff's claim?

A. And all other creditors who should come in.

Q. Is that all that was sought against Duff? A. That is all, I

think. I have the complaint here, if you would like to look at it.

Q. Did you act on the trial as counsel for either Thompson or Tighe? A. No, sir.

Q. Did you participate in the motion on their part for their allowances? A. No, sir.

Q. Did you say nothing? A. I said nothing in regard to that. I suggested, when they moved for a dismissal of the complaint, that Thompson had been released from his debt through the Bankruptcy Act. That is all I said. It was not in regard to the allowances.

Q. How many witnesses did you have present on behalf of the defendants? A. There was Mr. Duff, the auctioneer, Mr. Witte and the books, and two or three others.

Q. I asked you how many witnesses you had, and not about the books? A. I think we had some five.

Q. Was the Term at which you moved the cause for trial, the first Term at which you had placed the cause on the calendar? A. Yes, sir; it was the first one when noticed.

Q. How many Special Terms had intervened from the joining of issue down to this Term? A. Perhaps two, perhaps three; I do not remember. I know of two.

Q. Do you know who held those Terms? A. I do not.

Q. What Justices? A. I do not remember.

Q. Do you remember very distinctly that Judge Barnard was the Justice who held the Special Term when you did put the suit on the calendar? A. I know he did. I know that he presided at the trial there.

Q. What was the motion before Judge Barrett? Did that motion ask anything more than a stay of proceedings? A. It asked for a stay of proceedings only, I believe, for the privilege of appealing.

Q. And that Judge Barrett denied? Yes, sir, denied.

Q. Denied without security—unless security were given. A. We offered, if they would give security, to give six months' stay.

Q. Was the motion for anything further than a stay of proceedings? A. He denied that motion, and on the motion the question came up as to this property.

Q. Was there any motion to set aside the allowances before Judge Barrett? A. No, sir; at the same time Mr. Compton made quite a speech on the subject, and I answered him as well as I knew how.

Q. What was the claim that Mr. Shepherd sued for? Was it anything more than the payment of his debt of \$5,557? A. That was what he sued for.

Q. Nothing further? A. Nothing further, except for an injunction and Receiver to take possession of this property for the purpose of making his money out of it.

Q. All the money that he sought to obtain from this property was \$5,557? A. Yes, sir, that is all, I think.

Q. And if this had been paid to him, at any time, it was an end of the suit? A. Yes, sir.

Q. And the result was, that he sought to recover \$5,557, and he went out of Court without judgment, and with \$2,500 allowances, in addition to the taxed costs? A. Yes, sir.

By Mr. CURTIS :

Q. In the proceedings before Judge Barrett, did Compton allege the impropriety of these allowances as one of the reasons why there should be a stay of proceedings? A. Yes, sir.

Q. It was argued on both sides before Judge Barrett? A. Yes, sir.

Q. Judge Barrett asked you some question, what was that? A. He asked me why there had been \$1,500 allowance given. Mr. Compton tried to make out that there had been no trial, and Judge Barrett wanted to have his mind satisfied in regard to that. I had a little brief on that point which I referred to, and he said it was all right.

By Mr. PARSONS :

Q. That there had been a trial? A. Yes, sir.

By Mr. CURTIS :

Q. Judge Barrett did not pass on the question either way, for or against the allowances, in point of fact? A. No, sir.

Q. He did not go into that subject? A. He did not go into that subject, only the statement was made as to what the allowances were. I stated that the allowances were proper, and that I had asked for more. The whole thing was stated before Judge Barrett.

Q. Had you any purpose or had your clients any purpose, in moving the case for trial at that particular Special Term, to get it before Judge Barnard rather than any other Judge? A. I had not the least.

Q. Do you know whether your client had? A. I know that he only urged me to go on with it, not knowing who was to preside at the Special Term.

Q. He had previously, before it was known that Judge Barnard was to sit at that Special Term, urged you to go on and get a termination of the case? A. Yes, sir, he had.

By Mr. PARSONS :

Q. Were you not aware of the fact that Judge Barnard felt very friendly towards Mr. Duff? A. I do not know it, and I did not know it. I had done no business for Mr. Duff for a long time except this, and I have hardly ever had anything to do with Judge Barnard.

Q. Did you not know, or had you not learned, of the proceedings in respect to the Olympic Theatre, in which Judge Barnard had granted an application made by Mr. Duff for the lease of that property? A. I had read the case in the papers.

Q. Had there been any communication between Mr. Duff and you on that subject? A. Not the slightest.

Q. You did not learn from Mr. Duff of the friendly feelings that existed on Judge Barnard's part towards him? A. Not the slightest. I never had any conversation with him on the subject at all.

Q. Have you any knowledge when Mr. Duff learned that Judge Barnard was to hold the Special Term? A. I think I told him.

Q. Did he then say to you to push the case? A. He had told me before. He said he wanted the case disposed of.

Q. When you told him that Judge Barnard was to hold the Court, did he tell you to push the case? A. I don't remember that he said anything of the kind at the time I told him.

Q. He did not object to Judge Barnard? A. No, sir.

By Mr. CURTIS :

Q. When did this case come to trial? A. It was in 1871.

JOHN E. DEVELIN, a witness, being duly sworn, testifies :

By Mr. CURTIS :

Q. You were connected, as counsel for the defence, in the case of *Samuels agst. Bryant & Henderson*, proprietors of the *Evening Post*? A. Yes, sir.

Q. When did that case commence? A. Will you let me refer to the case?

Q. Yes, sir; refresh your recollection? A. [After looking at the papers.] The complaint is verified on the 12th December, 1870, and the action must have commenced about that time. There was no answer.

By Mr. PARSONS :

Q. No answer? A. Not what you would call an answer.

Q. One stating mitigating circumstances? A. There was.

By Mr. CURTIS :

Q. What was it for? A. It was an action of libel brought against Bryant & Henderson, proprietors of the *Evening Post*.

Q. And no answer was put in? A. No answer in the strict term of the making an issue, but a paper was served stating mitigating circumstances, which we intended to prove upon the assessment of damages before the Sheriff's jury.

Q. The publication—the libel was not denied? A. No, sir.

Q. Then it went to the Sheriff's jury to assess damages, and you proved mitigating circumstances? A. Yes, sir.

Q. Will you state briefly what occurred? A. I was not present at the assessment of damages, before the Sheriff's jury. That was conducted by my partner, Mr. Miller. I can tell you, from my knowledge of the affairs of the office, what the assessment was.

Q. What? A. \$5,000. I can also tell, as matter of record, what occurred upon the assessment of damages.

Q. State that. A. The record showed that the plaintiff's counsel told the jury that they did not expect punitive damages, and the case then went to the jury, with four other cases which were at the same time entertained by the jury, for the assessment of damages in succession, by the same jury, without, however, any assessment having been made in any of the cases. After they had gone through with these five cases, the jury came in and made its assessment, and gave in its assessment in each case—\$5,000 in Samuels *agst.* Bryant & Henderson's, and different sums in other cases.

Q. Are you aware of efforts on the part of the defence in that case, to cause any delay in the proceedings? A. No, sir; on the contrary. The next day after the assessment for damages was made, Mr. Miller made an affidavit stating the circumstances which I have already related here, and obtained an order from Judge Ingraham, to show cause why the assessment should not be set aside, and a stay of proceedings was granted in the case, on the part of the plaintiff, which order is dated December 6th, 1870. The inquisition was taken on the 5th December, 1870. That motion was argued or submitted—I do not remember now which—before Judge Barnard. My recollection is strong—

Q. What was that motion for? A. To set aside the assessment. My impression is strong—

Q. In consequence of what—for what reason? A. For the reason that the damages in five cases had been assessed by one jury without their announcing their assessment in any one case.

Q. Irregularity in the proceedings of the Sheriff's Jury? A. That was one; and the other was excessiveness in the damages. On the subject of delay my impression is strong, although I am not certain about it, that I was unable to prepare the points to be submitted to the Judge at the time the papers were submitted. I was very busy at the time and there was some delay on my part in that regard, owing to other engagements. My impression is further, that the Attorney on the other side obtained an order to show cause why the motion should not be denied, unless my points were submitted within a given time and before that time. I submitted the points. I sent them to Judge Barnard's house by one of my clerks or boys. A number of times afterwards I urged the Judge to decide the case, without saying anything about how he should decide it. I wrote to him to Saratoga in August or July, to say I wished he would come down here to decide the case; that one of my clients, Mr. Henderson, who was

a thorough business man, desired every thing promptly done and desired to know what the decision was to be, whether the firm had to pay the \$5,000 to Mr. Samuels or not, and did not want to have the matter dragging along. I did not hear anything from the Judge until one day he said: "I have decided "that matter in your favor, and you may draw up an order and "submit it to me." I took the order and submitted it to him and he took it; and, as I remember, wrote a short opinion, and I caused that order to be entered. There was no time at all when our client or his attorneys desired any delay in the decision of the motion. We desired no delay. We wanted the matter settled one way or the other. Our clients are a large firm, doing a great business, and they did not want a little thing of \$5,000 hanging for two or three years against them, but if they had to pay they wanted to pay it.

Q. Do you know anything about a pencil memorandum or words written in pencil on your brief, "delay would not be "bad?" A. No, sir; I do not know anything of the sort.

Q. Did you write any such words? A. No, sir; I never wrote any such words on any brief or paper going to a Judge in my life; I do not consider myself capable of doing such a thing.

Q. Do you know or believe that any member of your firm put such words? A. Mr. Miller is a son of a former partner of mine with whom I was brought up, and whom I have known from childhood, and I am sure he would not do such a thing. Mr. Trull was with me when I was Corporation Counsel, and from his knowledge of the law and his abilities I took him into partnership with me afterwards, although he was only a clerk when I left that office. I do not think he would. If I thought so, I should not let him remain my partner long.

Q. Is there any relation of friendship or anything else between you and Judge Barnard which would lead Judge Barnard, in your opinion, to favor your wishes as a practitioner before him, wrongfully or improperly? A. No, sir; my relation with George Barnard—I call him George, which is a habit of New Yorkers. I have known him for a long time, sixteen or seventeen years. We were young men together. It is a New York habit of persons calling each other by their first names. Mr. Andrews—I call him Rufus and he calls me John, and I call this gentleman (Mr. Underhill, the stenographer), Ed. and he calls me John, although I have not known him half so long. Judge Barnard and I have been intimate in this sense that I have a great regard for him and I think he has for me. And at any time when we meet we meet pleasantly as friends. We do not meet often. I have not seen Judge Barnard, before to-day, I think, since January; and before January I don't know when I had seen him. He and I sometimes go off shooting and fishing and yachting together. There is no intimate association that brings us frequently together. I have lived all the time, for nine or ten

years, up to October, at Manhattanville, and my nights have been passed there, and I would not be likely, therefore, to meet him evenings. I appear before him in Court, and I have been with him at the Astor House from time to time, but as to general association, I am not with him; but if our circumstances were such as to permit it, I think we would be pleased to meet each other oftener.

Q. How long have you practiced law in this city? A. I have practiced law in this city since 1844.

Q. You have been corporation counsel? A. Yes, sir.

Q. Are you extensively acquainted with Judge Barnard's reputation as a Judge? A. Yes, sir.

Q. Did you ever hear anybody impute to him with specifications of time and circumstance, any fact of pecuniary corruption in office? A. No, sir; I never did, and I don't believe there is any such thing; I do not mean to say that Judge Barnard has not done things that were unwise, but never from a corrupt motive, but either from overweening personal friendship, or because his feelings have been worked upon in some case of hardship. I instance the Connolly case; I think it was an unwise thing bailing Connolly as he did. I have no doubt that the ladies worked upon his kind heart and got him to do what he had a right to do as a matter of discretion, and perhaps his judgment, as a Judge, is a great deal better than mine, but no corrupt motive ever influenced him, nor did I ever hear anybody say it did, and specify time place or circumstance. I have heard it said in the newspapers that Judge Barnard was a corrupt Judge, and a bad Judge.

Q. You know of no fact which justifies such an imputation? A. I know of none. There is another matter I have seen in the papers I would like to speak of; it is the suit brought against the Tammany Society, about which there is some question.

Q. State what you know about it? A. I desire to say that when I drew the papers I did not know, and do not know now, that Judge Barnard was, or is a member of that Society. Although I have been there, and have attended many meetings, and have been a Sachem of the Society, I don't remember that I ever met him there. But even if he were a member, I contend as a matter of law, he would not be incompetent to act as a Judge, because the Tammany Society is merely an eleemosynary institution, and the members of the party who are members of the Society have no pecuniary interest in it any more than I, as a member of the corporation of the city of New York. I do not mean as Mayor or one of the Aldermen, but as one of the citizens that own property and pay taxes; if I were a Judge, I would be incompetent to sit in the matter that relates to the city of New York; or I, as a member of the Foundling Asylum Society, because I had paid my \$50 and become a life member, would be incompetent to sit in a case in which it was a party. Because

I hold that relation, I have no pecuniary interest whatever in it, any more than I have in the Tamany Society, which, by its charter, is organized for the purpose of distributing alms.

Q. Do you know of any motive that Judge Barnard could have in that case for acting one way or the other? A. Judge Barrett denied the motion to continue the injunction, on the ground that Judge Barnard was shown by affidavit to be a member of the Tammany Society. Although I urged upon him that it was a eleemosynary Society, he refused me time to get up affidavits showing what the character of the Society was in its actual operations, but gave me one day to get a certificate from Judge Barnard that he was not a member, but would not allow anything else to come in. When I could not get the certificate, as Judge Barnard was out of town, he refused to give a day's opportunity from Saturday over until Monday to get an affidavit to show the nature of the institution or its operations, or anything whatever, and he decided the motion, as I thought, in an arbitrary manner, not at all consonant with the interests involved, or the character of the counsel who appeared in favor of the plaintiff.

Mr. PARSONS :

Q. What were the interests involved of which you speak? A. The interests involved of which I speak, were of the parties connected with the Society having meetings in its rooms.

Q. You mean the right of a particular faction or branch — A. I mean that it was a suit —

Q. Hear my question. Do you mean the right of a particular branch or faction of the Democratic party to use Tammany Hall? A. No, sir, I do not.

Q. What do you mean by the interests involved? A. I mean the interest or right of every member of the Tammany Society to meet in the public room when he pleases.

Q. For eleemosynary purposes? A. Yes, sir, that was his right; for eleemosynary purposes.

Q. Do you mean the right of men to meet for eleemosynary purposes? A. That was the ground of this action.

Q. Was that the purpose for which the corporators of the Tammany Society usually met there? A. They met for a great many purposes.

Q. Be so good as to answer my question. Was that the purpose for which the corporators of Tammany Society usually met there? A. No, sir.

Q. They met for political purposes? A. No, sir.

Q. Never? A. Not that I ever knew of until recently.

Q. Have you recently learned that the purpose for which they do meet is a political purpose? A. You are asking me about the corporators, not the General Committee.

Q. I am asking about the corporators? A. I have never

known the corporators to meet for political purposes at all, until the other night.

Q. Are not the corporators members of the Democratic party who hold their meetings at Tammany Hall? A. There are many Republicans who are corporators of the Tammany Society.

Q. "Tammany Republicans?" A. No, sir. John A. Kennedy and Andrew Carrigan are members of the Tammany Society, and I could give you, after a few moments' reflection, the names of forty or fifty prominent Republicans in the city of New York who are members of the Tammany Society.

Q. Did they become members as Republicans? A. No, sir.

Judge BARNARD :

They always come there to vote at the elections.

Mr. PARSONS :

Is there any question that Tammany Hall is a Democratic organization? A. Which do you refer to as the organization of Tammany Hall?

Q. Is there any doubt that either organization is a Democratic organization? A. The legal body is not.

Q. Which do you refer to? A. To the Tammany Society.

Q. Does that society own Tammany Hall? A. Yes, sir, the corporation owns Tammany Hall.

Q. Did you ever know a Republican meeting to be held in Tammany Hall? A. No, sir; but I have known negro minstrels to meet and to play there—Bryant's Minstrels. Nor did I ever know of an application from a strictly Republican organization for a meeting to be held there.

Q. Do you know Mr. John Scott, by whom this suit was brought? A. Yes, sir, very well.

Q. Do you know whether he was in political sympathy with the Tammany Hall General Committee, of which Mr. William M. Tweed was chairman? A. I could not answer that, because I have had nothing to do with that organization since 1866.

Q. Have you any opinion on that subject? A. I have the opinion that he is a friend of Mr. Tweed, and he may have been a member of the Committee, but I do not know the fact.

Q. Was not that suit brought immediately after the change in the organization of the Committee on Mr. Tweed's retirement from the chairmanship, and those in sympathy with him ceasing to be members of the General Committee? A. Oh, no; I will tell you what it was. The General Committee, of which Mr. Tweed was chairman, or had been chairman, ceased to exist the 31st of December, 1871.

Q. When was this suit commenced? A. After that. A new General Committee was elected then.

Q. Hostile to Mr. Tweed? A. Some of it was. Mr. Charles O'Connor was elected, and I was elected, and I think both of us

are well known opponents of Mr. Tweed, and have been for years.

Q. Did not the Sachems, subsequently to the first of January, or about that time, refuse permission to any political body in sympathy with Tweed to hold meetings in Tammany Hall? A. No, sir, I do not think this Committee was in sympathy with Tweed. I know I was not, and I know a good many others who were not.

Q. Did not the Board of Sachems refuse permission to the body, which was in sympathy with Mr. Tweed, to meet in Tammany Hall? A. I think not.

Q. Did they not refuse permission to the body with which Mr. Scott was connected? A. Yes, sir.

Q. Was not that a body— A. I will take back a part of the answer. They did press a resolution which was understood to mean to exclude everybody but intended the new General Committee of Tammany Hall. The resolution was passed after the old General Committee had ceased to exist. You have the papers here in the case, I believe. I am not positive, but my recollection of the resolution is, that it was a direction to the janitor to shut the doors, and exclude everybody from the Hall. It was upon that ground that they who were members of the Tammany Society desired to have the doors open for us to get in, and the suit was brought upon the theory that the Sachems, being nothing but the trustees of our institution, had no right to exclude us, who were members of the Society—not members of the General Committee.

Q. The Sachems correspond to the Directors? A. They correspond to the Trustees or Directors of a Bank.

Q. Is there any doubt of the truth of the allegation of the complaint in this Scott suit? A. Not that I know of. I think they were true, as was informed.

Q. You do still? A. I have seen nothing to change my views in regard to it.

Q. You got an order of injunction from Judge Barnard? A. I did.

Q. Do you know where it was got? A. No, sir.

Q. Did you speak with Judge Barnard on the subject? A. No, sir.

Q. In reference to the Samuels suit, did you prepare a brief that was submitted to Judge Barnard on a motion before him? A. My impression is that I did.

Q. Can you speak positively? A. I cannot without looking at the papers, and I have not the original papers here. I have got the printed case.

Q. Did Mr. Miller prepare the brief? A. I cannot say. It is usual in our office, when a brief is prepared by Mr. Miller, or me, to consult with each other about it after it is done, and go

over it and correct it. It was probably the joint action of Mr. Miller and myself.

Q. Have you any recollection that you prepared a brief, or participated in the preparation of it? A. I prepared a part of it, because I know that I gave Mr. Miller a case in Wendell, where the assessments of damages had been set aside. I gave him that case myself.

Q. What did you give Mr. Miller that case for—to enable him to make a brief? A. I think I gave it to him to enable him to make up the brief—to put in the brief he had made or I had made—I cannot recollect about that.

Q. Did you submit that brief to Judge Barnard? A. Personally?

Q. Yes, sir. A. No, sir.

Q. Did you see it submitted to Judge Barnard? A. No, sir.

Q. Of your own knowledge, who did submit it to Judge Barnard? A. I know nothing, except the general course of the office.

Q. Mr. Black stated that the brief was handed by somebody from your office to him, and was by him submitted to Judge Barnard. Are you able to state that that is not so? A. I think it is very improbable that we should submit briefs to a Judge through the opposite counsel. We always send by one of our own clerks, and not by the opposite attorney.

Q. Are you able to contradict Mr. Black upon that point? A. I said no.

Q. Are you able to state, from any knowledge you have, and please confine your answer to that, that there was not written upon that brief prepared to be submitted to Judge Barnard, the words in pencil, "Delay will not be bad"? A. So far as my own writing is concerned, I am prepared to say, of my own knowledge, that there was no such thing written upon it. As regards what any one else did, I have no knowledge.

Q. Is Mr. Miller, your partner, in the city? A. Yes, sir; he is coming up here when I get back, we cannot both leave the office;

Q. Is Mr. Trull, your other partner, in the city? A. Yes, sir; I think he is; he was yesterday.

Q. You have spoken of the record of the assessment of damages—what the record shows. What do you mean by the record? A. I mean the affidavits that appear in the printed case on which the case was argued, in the Court of Appeals, where Judge Barnard was sustained.

By Judge BARNARD:

Q. It went to the General Term first? A. Yes, sir; the plaintiff appealed from Judge Barnard's order to the General Term, where the order was affirmed, and then it went to the Court of Appeals and then the Court of Appeals dismissed the appeal.

In speaking of the record, I mean the case that was used on the argument before the Court of Appeals.

By Mr. PARSONS :

Q. Do you not know in some way by this record of which you speak, that evidence for the defendant was introduced upon the assessment of damages? A. I said so.

Q. Do you not also know that there was no objection, on the assessment of damages, to the jury considering this case before their verdict in the earlier cases which had been submitted? A. By the record I know it.

Q. Have you got a copy of that letter that you wrote to Judge Barnard, at Saratoga? A. No, sir.

Q. Is there any way in which the contents of that letter can be ascertained? A. I will tell you the occasion of it. There was a motion made before Judge Sutherland, by Mr. Black, to set aside the stay of proceedings, which motion was denied by Judge Sutherland, which called my attention again to the case, and then I wrote to Judge Barnard that I wished he would decide the case, or something of that sort.

Q. That was just before he did decide it? A. No sir; he did not come down for some time after that.

Q. Was it not within a week or two before he decided it? A. I do not think it could have been as soon as that.

Q. Did you write to Judge Barnard that an article had appeared in the *Tribune* on the subject of his delay in deciding that motion? A. I think I referred to that; I think I said something like this: "I suppose you have seen what the *Tribune* says in regard to this matter of Samuels against Bryant?"

Q. Did you read Judge Barnard's opinion in the Samuel's case? A. I read it, certainly.

Q. Did you notice, at the time, his reference to Judge Sutherland's action? A. Yes, sir.

Q. Did he learn from you what Judge Sutherland had done? A. No, sir.

Q. Did you write to him on that subject in this letter? A. No more than what I have said, "I suppose you have seen what Sutherland said on the motion." I did not tell him what he had decided. I supposed, as a matter of course, that he had seen it.

Q. Did you know James Fisk, Jr.? A. Very slightly.

Q. Where did you first become acquainted with him? A. I first became acquainted with him when he was a merchant in Boston, going one night from New York to Boston on the Fall River boat.

Q. When did you renew your acquaintance with him on his coming to the city of New York to do business? A. I never renewed it with him.

Q. You mean you never met him after he came to New York?

A. I have met him after he came to New York. I was trying to think where I met him first. The first place I met him after he came to New York, as far as I can recollect, though I do not know that it was, was when some trouble arose about the Erie Railroad Co., though I did not know that it was the same gentleman at the time; I saw him in Jersey City. The next time I saw him after that, as far as I recollect, was in the Erie Railway Co. building, when I went on some business concerning the purchase of a hotel at Long Branch.

Q. Did you go to see him in Jersey City? A. No, sir.

Q. Did you meet him there accidentally? A. Yes, sir.

Q. Purely so? A. Purely by accident.

Did you have any conversation with him? A. Very short—"How do you do," &c. We chatted a few moments, but not on business.

Q. Was anything said about Judge Barnard? A. No, sir.

Q. Nothing said about Judge Barnard's order keeping them in Jersey City? Not a word.

Q. Have you ever seen Mr. Fisk and Judge Barnard together?

A. So far as I can recollect, never.

Q. Be so good as to refresh your recollection and see if you have not seen, and if so, state when you have seen Judge Barnard and Mr. Fisk together?

Mr. CURTIS [to Mr. Parsons]:

You mean out of Court?

Mr. PARSONS:

Of course, I mean out of Court. A. No, sir, I do not remember. I do not think I have seen Mr. Fisk, to speak to him, or in company with anybody I knew outside of Court six times since he came to New York; and I do not think as many as that.

Q. On those occasions did you call at the Erie Co.'s office?

A. On that one time I went to talk to him about a hotel belonging to my brother-in-law, Mr. Stetson.

Q. Where else have you ever seen Mr. Fisk? A. I have seen him riding out with his four-in-hand, and matters of that sort, but not to speak to him. I have seen him as Colonel of the 9th regiment, but I don't remember to have spoken to him, except on these two occasions. It was on the second when he reminded me of the trip across the Sound.

Q. Do you know Jay Gould? A. No, sir; I have never spoken to him. I know him by sight. I never spoke to him in my life, that I know of.

EPHRAIM R. STEINHARDT, a witness, being duly sworn, testifies :

By Mr. PARSONS :

Q. Were you the plaintiff in a suit to restrain the foreclosure of a chattel mortgage brought in the Supreme Court against John W. Funk? A. I was.

Q. Were Townsend, Levinger & Waldheimer your attorneys in that suit? A. They were.

Q. Were you present with them on an application made to Judge Barnard for an injunction in that suit? A. I was.

Q. Did you subsequently take the papers, upon which that application was made, for the purpose of obtaining an injunction from Judge Barnard? A. I did.

Q. Was the injunction procured? A. It was.

Q. Who procured it? A. John R. Fellows.

Q. Who is John R. Fellows? A. The Assistant District Attorney.

Q. Were you with him at the time? A. I was not.

Q. Did Judge Cardozo have anything to do with it? A. No, sir, he did not.

Q. Did you not hear from Mr. Fellows that the papers were handed by him to Judge Cardozo? A. I did not.

Q. Was Judge Cardozo's name mentioned to you by Mr. Fellows? A. It was not.

Q. Is that all you know on the subject of the granting of the injunction, that you handed the papers to Mr. Fellows, and subsequently received them from Mr. Fellows, Judge Barnard having granted the injunction? A. I went to Mr. Fellows and told him that I had been mistaken in the sort of counsel I had; that he knew nothing about the law, and nothing about anything else, and was more fit for a shoemaker than a lawyer, and I went to him and asked if he would please take charge of the case for me; that I thought if the matter was explained right the injunction would be granted, and he said that he would, and he acted as my counsel in the matter.

Q. He left you for the purpose of explaining matters aright? A. He left me for the purpose of making an application for an injunction.

Q. Did you subsequently receive the papers from Mr. Fellows? A. I did.

Q. What did you do with them? Did you then take them to your counsel, of whom you have spoken as not knowing any more about law than a shoemaker? A. No, sir; I did not. I took them to Mr. Townsend; I did not take them to Mr. Levinger. I told him that I wanted him outside of the case entirely.

Q. Was it not Mr. Townsend who made the application before Judge Barnard? A. No, sir; not to my knowledge.

Q. I repeat the question. Was it not Mr. Townsend who made the application? A. I do not remember.

Q. Were you not present at the time? A. I was.

Q. Do you mean to tell this Committee that you do not remember that it was Mr. Townsend who made the application? A. I was standing in the rear of the room, and did not notice who handed it up.

Q. Was Mr. Townsend present? A. I believe he was.

Q. Did you go with him from his office? A. I did.

Q. What did he say? A. He said he would apply to the Court of Common Pleas, when I went out.

Q. Was it at the Common Pleas that the application was made to Judge Barnard? A. No, sir; the Supreme Court.

Q. Did Mr. Townsend go there with you? A. I did not take notice.

Q. Did you not take notice of what took place before Judge Barnard? A. I did not.

Q. Do you state that positively? A. Yes, sir; I do. I stood in the rear, talking with a gentleman.

Q. And you did not take notice what took place? A. I did not take notice of anything that took place, only that the application was refused.

Q. Is the Mr. Townsend, of whom you speak, the partner of Mr. Levinger? A. I suppose so.

By Mr. CURTIS :

Q. Who had had the principal charge of this case for you, Mr. Townsend or Mr. Levinger? A. Mr. Levinger.

Q. You had been in consultation with him about it? A. With no other man but Mr. Levinger.

Q. You had had no conversation with Mr. Townsend about it? A. With nobody else but Mr. Levinger.

Q. You made up your mind, did you not, that he was not competent to attend to the case? A. I told him that I was astonished that he had been admitted to the bar.

Q. When did you tell him that? A. On the same day after he could not get the injunction.

Q. You made up your mind that he didn't understand the case? A. I made up my mind that he didn't understand anything about the law whatever. I asked him to give me back the papers. He wanted to go to another Court, and I told him, "No, sir."

Q. Then you went and employed Mr. Fellows? A. I did.

Q. You had known Mr. Fellows for some time, had you not? A. Yes, sir; we were on the staff together.

Q. Of what regiment? A. The Second Brigade.

Q. You were formerly acquainted personally? A. Yes, sir; we were on the same staff together.

Q. And you gave the papers to Mr. Fellows, and he returned them to you? A. He did.

Q. You acquainted him with the case, so that he understood it, and made your application? A. I did.

By Mr. PRINCE:

Q. What time of day did you give the papers to Mr. Fellows? A. The next morning. I went right there to Mr. Fellows' office, but could not find him in, but the next morning, about 11 o'clock, I gave him the papers.

Q. That was the day after the application was made? A. The day after the application was made.

Q. What time did he bring the papers with the injunction granted? A. In about half or three-quarters of an hour afterwards.

By Mr. FLAMMER:

Q. You say you were talking with a gentleman in the Supreme Court when the application was made? A. Yes, sir.

Q. And you heard nothing of what passed between the counsel and Judge Barnard? A. I thought there would be no trouble whatever.

Q. And you did not hear what passed? A. No, sir.

Q. How did you state to Colonel Fellows that the application was made improperly? A. I was very very confident that it was a case that was good, that the application could not be refused, if it was explained aright, and when I saw afterwards that Mr. Levinger understood so little about the law, I was perfectly astonished.

Q. How did you know that he understood so little about the law—what knowledge have you of the law? A. The way he spoke afterwards.

Q. You had known Colonel Fellows some time? A. Yes, sir.

Q. Why did you not go to him first? A. Because Mr. Levinger had been my partner's attorney in other things involving some sales; I did not know anything about Mr. Levinger's talents as a lawyer until I found out in that suit.

Q. Was Mr. Townsend a partner of Mr. Levinger? A. Of Mr. Levinger.

By Mr. PARSONS:

Q. Didn't Mr. Levinger say to you that he could go into another Court and get an injunction? A. He said that he would try to get it in another Court, but I didn't feel like trusting him any more.

Q. You undertook to get the injunction yourself? A. I employed an attorney to get an injunction for me.

WEEKS W. CULVER, a witness, being duly sworn, testifies :

By Mr. CURTIS :

Q. What is your firm? A. Culver & Wright.

Q. Were you or your firm employed as counsel in the case of Savage against Kanes, and Elmendorf against Savage and others? A. We were attorneys for the plaintiff in the case of Savage against Kanes, and were the attorneys of the defendants in the case of Elmendorf against Savage and others.

Q. You acted for Mr. Savage in both of these cases? A. Yes, sir.

Q. Will you briefly give an account of the case of Savage against Kanes, and what that action was brought for? A. That action was brought for the purpose of dissolving the firm existing between James Savage and Michael Kane and Thomas Kane, know as the firm of Savage & Kane; in that suit there was involved an accounting amounting to \$15,000; the action was commenced by our firm, as attorneys for the plaintiff, and we made a motion for Receiver in it, which motion was granted on an order drawn by us and obtained from Thomas W. Clerke, late Justice of the Supreme Court. I have the original order in my hand; that order was granted, on our application, on the 19th of July, 1866, being an order to show cause. The motion on that order was afterward argued, and Mr. D. P. Ingraham, Jr., was appointed Receiver by Judge Clerke, on our application.

Q. That was in the partnership suit? A. That was in the suit to dissolve the partnership and for an accounting.

Q. Did the Receiver take possession of the property? A. He took possession of about \$18,000 or \$20,000 worth of property.

Q. Was that all the partnership property? A. No, sir, it was not; there was some \$80,000 worth of partnership property; a part of it was in the hands of the other partners, and we did not press with reference to that.

Q. Was there a question whether it was partnership or individual property? A. There was a question about it; Mr. Savage claimed it as his, and the Kanes claimed it as theirs; each party claimed that the other party was indebted; Mr. Savage claimed that the Kanes were indebted to him, and the Kanes claimed that Mr. Savage was indebted to them on the partnership transactions.

Q. This property—this real estate—the question whether it was assets of the firm was one of the questions in the case? A. If you will pardon me, the real estate involved in this first suit was sold by consent of all parties, and a part of the proceeds went into the hands of Kane, and the balance we claim should go into the hands of the Receiver. These were the funds that the Receiver took in this suit. The dispute concerning this real estate—these lots which were claimed by the Kanes to belong to

the firm, and which Savage claimed were private property—was litigated in the suit of Elmendorf against Savage and others.

Q. Have you brought the proceedings that took place in the case of Savage against Kanes? A. I have not. There was motion upon motion. There were motions for reference, which, I think, were denied, either two or three times, for the reason that there were some objections that they were not properly made. Finally, a reference was ordered in that case. There were a great number of pleadings and amended pleadings, and the proceedings were very voluminous. These [referring to a bundle of papers in his hand] are some of the amended answers, or amended complaints. I think the complaint was amended twice. There were answers to the original complaint, and answers to each of the amended complaints, and then there was a supplemental complaint, based upon a settlement between the parties to the suit, and an answer to that. Reference was granted in that action, which continued for nearly four years, and a great quantity of testimony was taken, and I do not know how many hundred papers, and I think the stenographers' bill for taking the testimony alone was a large sum.

Q. In the meantime, when did the Elmendorf case commence? A. I will tell you in a moment. We commenced this suit of Savage against Kane in 1866, and I think in October, 1868, the suit of Elmendorf against Kane and Savage and ourselves was commenced.

Q. Did these two cases finally come before Judge Barnard? A. Only the case of Elmendorf against Savage and others.

Q. That came before him for a settlement of the allowance to those final matters, did it not? A. It was tried before Judge Barnard.

Q. And after the trial the question of allowance arose? A. Yes, sir. The litigation which arose in that suit was caused by these facts: Formerly Mr. Savage owned four lots that were in litigation, himself. He was the individual owner of them. After he went into partnership with the Kanes he deeded them one-half of these lots. Subsequently Savage and Kane entered into a lease with Elmendorf & Dixon to rent these lots at a certain stipulated rent per annum, with a proviso for the purchase, at the end of the lease, for \$12,000. After this, Dixon assigned his interest in the lease to Mr. Elmendorf. In the meantime, Mr. Savage being indebted to us, and we wanting some money from him, he conveyed us his one-half interest in that to pay us what he owed us in sundry matters. He gave us his interest in the equity, which was one-half, for \$1,500. We agreed to allow him \$1,500 for his interest in the property, and he made this transfer to us. Upon the lease expiring, Mr. Elmendorf gave us notice that he elected to purchase for \$12,000, and we signified our willingness, though we were in doubt as to whether the lease compelled us to transfer the property, but at the same time we de-

sired to have no litigation, and we signified our willingness to execute a deed for our half of the property, upon Elmendorf paying us his one-half of the equity in the premises. There was a mortgage of \$7,000 on the premises. But Mr. Kane, who was represented by Mr. Andrew Boardman, declined to do this, claiming that they were entitled to all the proceeds of this land, and they declined to execute any conveyance unless they got the whole of the money. The consequence was, we would not give a deed unless we got pay for the property, and Mr. Elmendorf insisting upon his right to purchase, he commenced this action. His partner made a motion for a Receiver in regard to this fund of \$12,000, and that motion was granted after some time. We had no objection to that motion. Of course I supposed it was necessary for somebody to hold this money. There were a large number of parties to that action, John P. Elmendorf being plaintiff, and the defendants being James Savage, Michael Kane, Thomas Kane, Daniel P. Ingraham, Receiver, ourselves, and others.

Q. How many defendants in all? A. Sixteen in all.

Q. After the trial, when the order for allowance came up— A. I should state that on the trial the general facts were found in our favor. It was found that we were the bona fide owners.

Q. Who do you mean by "our?" A. Culver & Wright. At that time the firm was Culvers & Wright—James W. Culver, Weeks W. Culver, and Benjamin Wright. The firm was dissolved in 1868, and Mr. Wright and myself continued under the name of Culver & Wright. The judgment in that action was that we were the bona fide owners of one-half of these lots, which were situated in First avenue, on the corner of Thirty-eighth street. The judgment in the first instance was, that we should be paid the \$1,500 which we had paid for this property. That was made under a misapprehension of Judge Barnard, as stated in a letter which I have here from Mr. Boardman to us. He says that Judge Barnard made that order upon the mistaken supposition that we had taken a conveyance of the whole property; and that he had informed Judge Barnard about what the facts were, and that Judge Barnard had said that he would correct the decree upon his appearing before the Court with notice to us. This correction was made in the first judgment as it was given by Judge Barnard. Mr. Boardman received no allowance on the argument, but in the resettlement of the decree he received an allowance of \$400 and his costs, \$75—amounting in all to \$475. By the re-settlement, that was the amount his clients would have received provided this allowance had not been paid.

Q. Now, in regard to the other allowances? A. We received nothing whatever for costs or allowances in that action—not a cent. We got about \$400 for what cost us \$1,500. Not a cent of allowance did we receive.

Q. In regard to the allowances made other parties—what were

they? A. I cannot remember now, but I believe they were the usual allowances that were made upon notice. I received notice of application for the allowances. They were made upon notice to all the parties in the suit.

Q. The parties all appeared there in response to that notice, and discussed the subject? A. Yes, sir.

Q. Then the Judge settled the respective allowances? A. Yes, sir. Mr. Boardman was very much dissatisfied, at first, because they had not received any allowances; but subsequently, I believe, he was satisfied with it.

Q. Will you produce, if you have in your possession, the note from Mr. Boardman to you in regard to this case? A. Yes, sir. I will read it. It is written on one of the printed letter-heads of Benedict & Boardman's law office, No. 128 Broadway, and is dated New York, June 18, 1869, and reads as follows: "Messrs. Culvers & Wright—Gentlemen: Just after you left, Judge Barnard came in, and also Mr. Hill. The Judge directed me to state my objection, and I read your answer, and asked that the judgment should at least be amended so as to conform to your answer; and that, as you claimed one-half the property, you should be restricted to one half of the proceeds. He seems to have been under the impression that your deed embraced the whole property, and that in giving you \$1,500 he was restricting your claim. Yours, respectfully, L. BOARDMAN."

Q. What composed the \$1,500 referred to in that note? A. That was the price we had paid for one-half of the property we took the deed of.

Q. That was given back to you as property to which you were entitled by the result of the suit and not as an allowance? A. Yes, sir. We received not a single cent of costs in that action. Nothing was allowed to us, whatever.

By Mr. PARSONS:

Q. Who received the allowance of \$1,500? A. G. R. and T. D. Pelton, the plaintiff's attorneys.

Q. You spoke of a motion for the appointment of the Receiver. Was not that a motion for an injunction as made? A. I do not understand you.

Q. You said that there were motions in the suit of Elmendorf against Savage, and you specified a motion for the appointment of a Receiver. I ask you whether or not that motion was not for an injunction, and that the Judge himself, upon that motion for an injunction, appointed a Receiver? A. No, sir. There was a motion made for an injunction, and I understood also, a motion for a Receiver.

Q. One motion? A. No, sir, two different motions.

Q. Have you the notice of motion for the appointment of Receiver? A. I could not find it now—the papers are voluminous; I do not know that I could. I know there was a motion for a

Receiver. I know that the motion was made by Mr. Hill, acting for the Peltons, as the plaintiff's attorney.

Q. Were either of these motions opposed—either the motion for an injunction or the motion for the appointment of Receiver?

A. I think they were.

Q. Who opposed them? A. I think we opposed them.

Q. Did you not state on your examination, that you did not oppose? A. We made a motion for a Receiver in the case of Savage against Kane.

Q. I am speaking about the case of Elmendorf against Savage and others. Was the motion for the appointment of a Receiver?

A. I do not think we opposed the motion for a Receiver, but we did oppose the motion for an injunction.

Q. Who made the motion for the injunction? A. I think the plaintiff's attorney.

Q. Did any one else oppose it? A. I could not say whether they did or not.

Q. Who was present when the motion was heard? A. I don't remember whether I was or not. I know that we had Mr. Burrill retained for us, in the action, and I had great difficulty in getting him there to attend to our interests in consequence of his business engagements.

Q. Did Mr. Ira Shafer appear for Mr. D. P. Ingraham, Jr., Receiver in the Kane suit, and oppose there the motion for an injunction and for an appointment for a Receiver in the Elmendorf suit? A. I cannot say whether he did or not. I know he was at the trial.

Q. Did he oppose either of these motions? A. I think not. I think he was in favor of the motion for the Receiver.

Q. Was he not also in favor of the injunction? A. I cannot say about that.

Q. Did he oppose that motion? A. I cannot say whether he did or not—I do not remember now.

Q. Would you not recollect if he had? A. I do not know that I would. It was a long time ago, and I would not undertake to say whether he did or not. I know he was at the trial and appeared there to try the case against us or to assist.

Q. Who was he for? A. For Mr. Ingraham, the Receiver. He tried to defeat our claim for one-half the equity in this property.

Q. That was \$1,500? A. Yes, sir.

Q. I understood you to say that neither party—neither Kane nor Savage disputed the right of Elmendorf? A. We did when the suit was commenced—we did dispute it.

Q. Upon the trial, I mean? A. On the trial we did dispute the right of Elmendorf to have this property, because it was worth a great deal more than \$12,000.

Q. You were beaten on that? A. We were beaten so far as

the right to purchase—upon that claim—but upon the other point we succeeded, as between the Kanes and ourselves.

Q. You established your right to the \$1,500? A. Yes, sir; to one-half the property.

Q. You established your right to \$1,500, or so much of the \$1,500 as one-half the property would pay? A. Yes, sir.

Q. That was all the success you had in the suit? A. Yes, sir. We were willing to make a deed of the property, provided we got one-half the equity before the suit was commenced, although we thought there might be grave doubts as to whether Elmen-dorf had a right to a conveyance under his lease.

Q. Kane didn't dispute that? A. They did dispute it, but they were willing to transfer the property, if they got the whole proceeds.

Q. If the whole proceeds were treated as partnership property? A. No, sir; I think Mr. Thomas Kane wanted it paid over to him.

Q. The partnership property? A. Mr. Kaue claimed it personally. He claimed that he had a mortgage on it, from Mr. Savage. There was a mortgage on it, but we claimed that the mortgage had been satisfied, by virtue of the settlement made in the other suit.

By Mr. CURTIS:

Q. What was Mr. Boardman's allowance? A. He had an allowance of \$400, and his costs, \$75—making \$475; one-half of which came out of our money.

Q. Was he, in your opinion, entitled to any? A. I do not think he was entitled to anything, because I had no allowance, and we really had beaten them. I didn't consider that either he or we were entitled to any allowance, but he certainly took \$237.50 out of our money.

Q. What was left for his clients? A. Nothing at all.

Q. Did Mr. Boardman ask for this allowance? A. It is my impression that he did. I do not think he would have got it, if he had not. He made a motion, on the re-settlement of the decree, asking for an allowance. He didn't refuse the money, and we had to pay our half of it.

By Mr. PARSONS:

Q. Q. How much did the equity of redemption amount to, or how much was left of the \$12,000, after satisfying the mortgage? A. There should have been in the neighborhood of \$4,000.

Q. \$4,400? A. Not so much. There were \$500 or \$600 interest on the premises. It was in the neighborhood of \$4,000.

Q. And after paying the costs and allowances in the order of Judge Barnard, and the compensation to the Receiver and his counsel, ordered by Judge Barnard, how much was left as the

amount of the equity of redemption which come to you? A. We got in the neighborhood of \$500.

Q. And the rest of it was used up in costs? A. It seems so—yes, we got one-half. There was left about a thousand dollars, and we got in the neighborhood of \$500.

Q. It was \$437? A. We got one-half of what was left.

By Mr. CURTIS :

Q. How long did this litigation last? A. It extended over some year and a half.

Q. How many lawyers were engaged in it? A. There was a large number. There was Mr. John D. Robinson, Messrs. Burrill, Davison & Burrill, ourselves, Mr. Ira Shafer, Mr. Hill, Mr. Pelton, and quite a number of other lawyers, who appeared for these other parties—I think there must have been ten or fifteen lawyers in the case.

By Mr. PARSONS :

Q. A good many of the lawyers had to go without any pay? A. Yes, sir, I guess so.

By Mr. CURTIS :

Q. Do you know of any ground for imputing favoritism, on the part of Judge Barnard, towards any of these counsel in giving allowance in this case? A. I do not. I was unable to discover any difference in the allowance in that case, and in other cases in which we were engaged. In other cases the orders were all appealable. If the parties were dissatisfied, I suppose an appeal could have been taken. The allowances were all made upon order, and these orders were appealable if any one was dissatisfied with them

JOHN H. STRAHAN, a witness, being duly sworn, testified.

By Mr. CURTIS :

Q. You are a counsellor-at-law in this city? A. Yes, sir.

Q. How long have you been in practice here? A. Five years.

Q. You are now the consulting counsel of Comptroller Green? A. I am.

Q. And you have been in that relation to him ever since he has been in office? A. I have.

Q. Were you connected in any way with the Foley Injunction suit, as it was popularly called? A. I was.

Q. In what way? A. The originator of it.

Q. Did you bring the action? A. I did.

Q. Did you continue in it in all its proceedings? A. No.

Q. How long did you continue in it? A. I forget the exact time when I went out of it, but I recollect the circumstances which led to my going out of it.

Q. You remained in it a considerable time? A. I remained in it until just before the preparation of the order following upon the argument held before Judge Barnard. On the settlement of that order I appeared for Comptroller Green, not for the plaintiff.

Q. Was it an accident, or by a purpose, that the application for that injunction came before Judge Barnard? A. The papers were prepared by myself and Mr. Robert H. Strahan, a member of this Committee. No other party had anything to do with it whatever. We were consulted by Mr. Foley, and on his employment we prepared the papers. The papers were ready, I think, the first or second of September, and Judge Sutherland was then sought at Chambers. At my own solicitation, Mr. William C. Barrett was brought in as associate counsel. Judge Barrett, at the time, was not in the country. And we went with Mr. Barrett to Judge Sutherland, and spoke to him in reference to it. Judge Sutherland hesitated, and the result of that hesitation was that he went to Judge Ingraham, and he told us, after he had returned from Judge Ingraham, that Judge Ingraham was going to devote the remainder of his term on the Bench, which was only two years, to the punishment of the parties who were engaged in these great frauds, and if we would go to him he would be ready to receive us. Well, I was not satisfied with it, as Judge Sutherland was sitting at Special Term. But, at his own request, we went out to see him that evening—I think it was Friday evening.

Q. To see whom? A. Judge Sutherland. When we went there we found Judge Sutherland there. He said he was so unwell that he could not see us, and then Mr. Barrett, Mr. Foley and myself went out to Judge Ingraham's house at Harlem, in accordance with the suggestion Judge Sutherland communicated to us through the day. We were then informed that Judge Ingraham had left, and no one could give us any information as to where he had gone to. I searched through the city to find out, if I possibly could, where he had gone. I went to his son, and he said he did not know. I tried to learn from his other son, who was with Burrill, Davison & Burrill, and I was told that he had left no trace, and they could not give any information. Judge Sutherland wished us to come back again if we did not get anything done by Judge Ingraham, and back again we started. Mr. Barrett and Mr. Foley and myself went at eight or nine o'clock, and found Judge Sutherland had gone from the city, though he had made a special appointment. This was on Saturday morning—the last day of Judge Sutherland's term. On Monday we did not know very well what we were going to do, after Judge Sutherland saw Mr. Barrett, and promised or wanted to see him, and did not. Nothing further was done on the subject, and we allowed that day to pass. I think, on the following day,

or on the Wednesday, I re-drafted the first part of the complaint that had been sworn to on the Tuesday preceding, and it was re-sworn to on the 5th, which is the date that the complaint now bears. We were then going to apply to Judge Barnard on the following morning. Judge Barrett had appeared, and his uncle solicited that he should be brought into the case instead of him, and Judge Barrett was brought in the case on the 5th. On the 5th we had resolved to apply to Judge Barnard, at Court, the following morning. But Judge Barnard that day was unwell, and was not in Court, and then we went out again that evening to find Judge Sutherland. We first went to Judge Barnard's house, but found that he was so unwell that he could not see us. He sent down word that he would see us at the Court the following morning. We then went to Judge Sutherland and saw him, Judge Barrett, Mr. William C. Barrett, Mr. Foley and myself, and Judge Sutherland again refused to give us the injunction, and refused to look at the papers. We came back, and on the following morning went into Judge Barnard's Court, and explained the case to Judge Barnard in Court, and he then granted a temporary injunction on that occasion.

Q. With an order to show cause? A. With an order to show cause, returnable on the 11th, I think it was, of September. The case came on on the 11th of September, and the argument was proceeded with all that week until Friday. I was the responsible counsel in the case all through this stage of it.

Q. And you pressed for the confirmation of the injunction? A. I did. I opened the case in the argument before the Judge.

Q. Who appeared in opposition to it? A. Mr. O'Gorman.

Q. Representing whom? A. Representing the city, the Board of Supervisors, and I think the Mayor, if I recollect right, and Mr. Vanderpoel was also associated, so far as the Mayor was concerned. Mr. Beach appeared for Comptroller Connolly, and Mr. William O. Bartlett appeared for Mr. Tweed.

Q. The President of the Board of Public Works? A. The Commissioner of Public Works.

Q. At that time had Mr. Green become Deputy Comptroller? A. No.

Q. When did Mr. Green become Deputy Comptroller? Can you fix the date? A. He became Deputy Comptroller — Judge Barnard intimated that he would continue the injunction on the afternoon of Friday.

Q. After a week's discussion? A. After a week's discussion; and on the following day Mr. Comptroller Connolly called upon Mr. Tilden, and, immediately following that, Mr. Green was appointed Deputy Comptroller.

Q. Did not that injunction entirely stop all the financial operations of the city government for the time being? A. Yes, so effectually, that, being the party responsible for having got that injunction, I considered it my duty to make inquiry as to its

effect, to see how far it could be modified with a view of enabling the city government to go on without any detriment. Mr. Green entered upon the duties of his office on the Monday morning. I went to the Finance Department on Monday morning and saw Mr. Green. Mr. Green was in, and with the assistance that we could get there, we went into the matter fully. It took us more than a week to make the investigation and examination, and after the investigation I prepared an order modifying the injunction—considerably modifying it, further than the Judge intimated in his opinion on the Friday preceeding. I was every day with Mr. Green, and the result of our joint action was, that I sent a copy of the order I had prepared—no counsel saw it but myself—or I handed it to Mr. O’Gorman as representing all the other parties.

Q. Was not the original injunction in its unmodified form the most efficient instrument by which Connolly was placed in such a position as to force him to appoint a deputy? A. There can be no doubt that the result of the Judge’s order was the compulsion of Connolly to do something, whether he would have resigned or not. The appointment of a deputy, I have no doubt, was entirely apart from Connolly. He was forced into such a position that he had to do something, and that something which was done, was the appointment of Mr. Green as Deputy Comptroller.

Q. At whose instance were all the modifications of that injunction that were made by Judge Barnard, brought about? A. The first modification, as I have told you, was the result of the united action of Mr. Green and myself, and was proposed by us, and I served it upon Mr. O’Gorman. That same evening after I served it, I received a notice at my office, at a very late hour, to attend at Mr. Tilden’s house. I saw Mr. Tilden, and he suggested a delay in reference to the modification of the order. I asked him then who it was who suggested the delay, and I found for the first time, that the Committee of Seventy had come into this matter. I told Mr. Tilden that so far as the Committee of Seventy was concerned, I would pay no attention whatever to anything they suggested, because they were entirely ignorant of the state of fact; that Mr. Green and I had spent a week to ascertain the fact, and we were more competent to determine than the Committee; and that we would take the responsibility of doing it. At Mr. Tilden’s suggestion, I agreed that the adjustment of the order, which was set down for the following morning before Judge Barnard, should be postponed. On the following morning early, we received a notification from Mr. Foley, who informed me that Colonel Stebbins, the chairman of the Committee of Seventy, had been at his house at six o’clock in the morning, and that the Committee of Seventy had become alarmed at the extent of the proposed modification of the order, and I met Colonel Stebbins at Mr. Foley’s request, at eleven o’clock—Mr. Foley, Colonel Stebbins and myself, at Mr. Foley’s store. The result of

that meeting was, that it was urged that another meeting should be held on the following evening at Mr. Tilden's house, I in the meantime agreeing that all proceedings should be delayed until the whole question of the modification of the order was considered. At four o'clock that same afternoon, the Committee of Seventy had arranged with Mr. Foley, that they would take charge of this case, because of the extent to which I was proposing to modify the injunction. I said I had not the slightest desire to interfere with any arrangement that Mr. Foley and they should make. On the following morning the substitution was signed by Mr. Robert H. Strahan, who was the attorney in the case, or I think I signed it for him, as he had gone out, and Mr. Barlow was substituted as the attorney. That same evening that the substitution was signed, the meeting was held at Mr. Tilden's house. Mr. Comptroller Green was there, Mr. Stebbins, the President of the Committee of Seventy, with the counsel of the Committee of Seventy, Mr. Havemeyer, Mr. Lawrence, Judge Barrett, who had been retained by the Committee of Seventy, Judge Pierrepont, Mr. Jones of the *Times*—I do not recollect whether there were any others or not. The object of the meeting was to consider this question of the modification of the order. I stood alone in favor of the modification, except Mr. Green, and he took no part. Mr. Tilden was absent, or rather was not present at the discussions, and I stood alone on the modification of the order.

By Mr. TILDEN :

I will ask you whether the meeting was not appointed without the knowledge of myself? A. Without any communication with Mr. Tilden. They took the use of Mr. Tilden's house for the purpose of the meeting. Mr. Tilden was not present at the meeting. He came in at the end, and concurred with the view I had argued for from the beginning. Mr. Stebbins and the counsel opposed the idea of modifying the injunction in any way, shape or form whatever. I took a different view of it, having satisfied myself, (as I stated) that it was absolutely necessary and an imperative duty for those who were responsible, to have it modified. After a discussion of two hours, Judge Pierrepont took the same view, and it resulted that Mr. Green retained me as counsel to appear before Judge Barnard, and maintain, as representing him, the modification of the injunction order, as I had proposed it, and as he had previously agreed to it. On the following day we appeared, Mr. Barlow, as representing the Committee of Seventy to a considerable extent, accepting the order as I had prepared it; but as he wanted it more stringent, I appeared and advocated the order, and represented to the Judge that I did so at the request of the Comptroller, who had investigated it fully, and that he considered that such modification was absolutely necessary to enable him to carry on the government of the city. The Judge took all the papers and the various

orders that were submitted, and he returned them substantially accepting the order which I had prepared, with two very important additions. One was of his own accord, and was the insertion of a restriction as to the District Court Houses, the frauds of which I was not cognizant of, and had no information of, and in reference to which Judge Barnard put in the clause of his own accord. And the other was, to make Mr. Green absolute in reference to the issue of the bonds of the city, and making it a special condition that while the bonds had to be issued to the extent to which the order provided for their issue, in the modification of the order suggested by myself, he provided that those bonds could only be issued by Mr. Green, and with his approval and with his signature written across the face of it. That, the Judge explained, was done, because he had understood that an effort was being made to interfere with Mr. Green in the position in which he was placed, and, so far as it was in his power, he was determined that Mr. Green should be maintained there, and that the administration of the city's affairs, so far as the finance department was concerned, should be in his hands, and in his hands alone.

Q. After this account which you have given, it is almost superfluous to ask you, but I will ask, did the modification of that injunction which you have now described, in any degree, or could it in any degree, operate in the interest of people who are called "the ring," directly or indirectly? A. No. On the contrary it was what was absolutely necessary for Mr. Green to have saved the credit of the city. It was that modification of the order which enabled Mr. Green to carry on the government, and save it finally.

Q. Were there subsequent modifications of that injunction? A. There was a very important one.

Q. Granted by whom? A. The question arose in this way: Judge Barnard held that the 2 per cent. act applied to all works in the city, I think, with the exception of those where the department had power to issue bonds of their own accord. It had been represented that the Department of Public Parks had the power, also, except in case of assesment bonds. I held that any department had power to issue bonds, and that was subsequently conceded, except the Comptroller. The Department of Public Parks, upon that, applied to Judge Ingraham for a mandamus, to compel the Comptroller to issue bonds under certain statutes. I appeared for the Comptroller, in this case, and I argued it on his behalf. Judge Ingraham, after considering the question, arrived at the conclusion that the proper interpretation of the two per cent. Act was, that it didn't apply to works of a permanent character, and that such works of a permanent character were authorized by law to be executed, and the Department of Public Parks should be allowed to proceed—that the Comptroller was bound to issue

bonds to provide money for that purpose, under certain laws. I met that by another move, holding that the Board of Apportionment had, by the two per cent. Act, to give their consent before such bonds could be issued, and Judge Ingraham agreed with me, and that was an entire block to the proceedings, Mr. Green being a member of the Board, and without the unanimous consent of the Board, no bond could be issued upon the mandamus, being issued with that qualification; that before any bonds could be issued by the Comptroller, there was required to be produced to him such certificate from the Board of Apportionment. The Department of Public Works, or Mr. Tweed, applied for a modification of that order of Judge Barnard, under the original injunction proceeding. By the original injunction, Mr. Tweed was absolutely tied up. His department had not the right to proceed with any works whatever. The question came before Judge Barnard, and I was absent. I had not got notice of the argument, because there had been another party substituted as attorney and counsel, and the notice of the argument was given to Mr. Barlow, the then attorney in the case. Mr. Lawrence appeared on behalf of Mr. Foley, who was represented by the Committee of Seventy, and they had an argument before Judge Barnard, and the result of which was that they handed each of their orders to Judge Barnard, proposing modifications of the original injunction order. The Judge sent for me, and handed me these orders, and explained that the modification of that injunction was one that affected the city so seriously, and that he was satisfied, from what had taken place, that I knew more about it than any other one, and he wanted me to look into the matter, to see whether any of these modifications to the orders that were proposed were proper, and he suggested to me to make a motion on behalf of the Comptroller, if they were not of a proper character. On examining, I was satisfied that they were not of a proper character. I was served with a notice of motion for a re-argument before Judge Barnard, with a view to have the matter brought up again. The Judge gave me a short notice. We went up. My interference in the matter was very strenuously opposed by Mr. Tweed, on the ground that Mr. Green was not a party to the proceeding. Judge Barnard held that Mr. Green, virtually, represented the city, and that he was entitled to be heard in any matter that affected the finances of the city. I was heard. While Judge Barnard stated that he felt bound by Judge Ingraham's order, modifying the original injunction, to the extent of allowing works of a permanent character to proceed, he, of his own accord, made a suggestion, which, virtually, again placed Mr. Tweed's action entirely in the hands of the Comptroller. The order which he framed was a very special one, directing that the original injunction would not apply, in so far as works of a permanent character under the direction of the Department of Public Works was concerned, but

that such works should only proceed in so far as the Board of Apportionment authorized the raising of the money to meet the expenditures of such works, and until such money was authorized, the work could not proceed.

Q. That was Judge Barnard's own suggestion? A. That was Judge Barnard's own suggestion, and was embodied in the order. The effect of it was that it entirely enabled the Comptroller to control the department, without which he was entirely unable to control it.

Q. Was there any further modification of the original injunction? A. There was a modification afterwards proposed in so far as the Belmont bonds were concerned by the removal of the name of the Deputy Comptroller written across these bonds. Certain portions of the bonds had been issued prior to Mr. Green entering the office. The contract with Mr. Belmont was for fifteen millions of bonds, and nine millions had been issued before Mr. Green was Deputy Comptroller. Mr. Belmont felt that if he issued bonds with the writing across, it would place the previous bonds at a disadvantage in comparison with those.

Q. In the market? A. In the market, in England.

Q. In Europe? A. In Europe, and he applied or requested that it should be modified. I prepared the necessary papers and the Comptroller, after considering the matter, agreed to it, and the modification was made at the Comptroller's request. There was, I think, another modification after when Mr. Green was appointed Comptroller, by which the writing across the face of these bonds of his approval was modified and done away with. I think those are all the modifications, as far as I can recollect, that took place in the case.

Q. Taking that injunction as a whole, as it was originally granted, and then taking it in its modified state, was it not, under all the modifications that it underwent, an effectual control—did it not effectually keep control of the affairs of the city for the time being, in the honest and pure hands of Mr. Green. A. The design, certainly, of Judge Barnard, was that that should be done, because he so expressed it to me twice. The effort was to secure it. But Mr. Tweed, in certain respects, set everything at defiance—beat us back in certain respects which I need not particularize. But the design of it was to place Mr. Green in a position in which he could say that the city was administered honestly. The object of the modification was to enable him to carry on the government, the original injunction preventing it. It was to put him in a position to do that.

Q. What was it Mr. Tweed set at defiance? A. Mr. Tweed set at defiance the injunction.

Q. He didn't obey it? A. He didn't obey it. We had no power to proceed against him for a breach, because we were not the plaintiffs in the case, and we didn't want to put ourselves forward so conspicuously as this proceeding would place us.

Q. That matter rested with the Committee of Seventy? A. Yes, sir; I reported the matter, but the Committee of Seventy never did anything in the case.

Q. Mr. Tweed did not succeed in impairing the force of the injunction judicially? A. I am not sure I understand your question.

Q. Did Mr. Tweed succeed in getting from Judge Barnard a modification? A. No, never; Judge Barnard gave Mr. Tweed no modification of any description.

Q. Did it surround him with greater restraints than he was under before? A. Entirely so—tied him up entirely and made him subordinate entirely to the Department of Finance.

Q. At the time when the original injunction was granted, is it just to say in your judgment that Judge Barnard was forced into that by the pressure of public opinion? Will you recall the events, if you please, and will you state whether, in your judgment, there existed any public opinion, expressed in any way or through any organ except the *Times* newspaper at that time? A. I am not prepared to answer that, because the question embraces such a wide range. I have no knowledge sufficient to enable me to do so. I can answer your question by saying there was a pretty strong feeling in reference to the proceedings of the Tammany Ring and to the effect of it. I found, in so far as Judge Sutherland was concerned, that he preferred his chances of a nomination to granting the injunction. I cannot speak of Judge Ingraham, because I only know from Judge Sutherland that he agreed to meet us; and even afterwards—after he had departed and left us, I know in a consultation I had with my cousin here, (Mr. R. H. Strahan) and also with Mr. William C. Barrett, we thought that there was no Judge who would give the injunction unless Judge Barnard did it, and when we went up that morning and got the injunction order, I recollect Judge Barrett making this remark: "That is a bold and noble act. If I was Judge I would not have had the courage to have done it."

By Mr. PARSONS:

Q. Mr. Willaim C. Barrett? A. No, sir; Judge Barrett.

By Mr. CURTIS:

Q. Is there a fact within your knowledge which would lead you to believe that the granting of that injunction by Judge Barnard was the result of an arrangement between himself and Tweed, or Sweeney, or any of the men composing the Ring, for the purpose of forcing Connolly out of office, and getting rid of him? A. No, sir; there is no fact within my knowledge that leads me to believe such a thing.

Q. Do you believe it? A. I have heard it stated, but I don't believe it. I never saw anything to justify it.

By Mr. PARSONS :

Q. Was it not Judge Barnard's injunction order that created the necessity for the modifications of which you have spoken, as essential to save the city from financial destruction? A. The original order, undoubtedly.

Q. Did you not state that the object and effect of Judge Barnard's injunction order was to force Comptroller Connolly to resign, or to take some action on his part? A. I did.

Q. Had not Mr. Tweed and Mayor Hall and other members of the Tammany Ring, for some considerable time prior to Judge Barnard's granting that injunction order, been endeavoring to force the resignation of Comptroller Connolly, or some action on his part? A. I can only say, from the letter from Mayor Hall, which appeared in the papers in the beginning of the week, that the argument was proceeding after the vouchers had been abstracted from the Comptroller's office. That is the only knowledge I have in reference to that matter. That stated that they had called upon him to resign.

Q. Don't you know, from the history of the period, that such had been the attempt on the part of Tweed, Hall, and Sweeney? A. No, I do not.

Q. You have no information on that subject? A. Not a particle; only that letter, which appeared in the papers, on the subject.

Q. Was not that letter a direct demand from the Mayor that Connolly should resign? A. A direct demand—yes, sir. I think it was. Then there was another letter appeared when Mr. Green was appointed. I may be confusing the terms of the two letters. I am not prepared to say which was which. There was one letter, I recollect, asking the resignation, or suggesting the resignation. I think it was upon the vouchers being stolen. There was another letter than that after he had resigned and the appointment of Mr. Green. Let me say that it was in consequence of that action of Mayor Hall, after Mr. Connolly had resigned, that Judge Barnard told me that he had put in that clause, by which Mr. Green must alone be responsible, and by which no one could sign bonds but him.

Q. That came some time after Mr. Hall's call upon Connolly to resign? A. The order came the last of that week, or the beginning of the next week.

By Mr. TILDEN :

Q. You mentioned a letter demanding that Comptroller Connolly should resign; was that the letter in which Mayor Hall removed Mr. Connolly? A. Yes, sir. I modified my statement.

AUGUSTUS F. BROWN, a witness, being duly sworn, testifies :

By Mr. CURTIS :

Q. You are of the firm of Brown, Hall & Vanderpoel? A. Yes, sir.

Q. Was your firm connected with a litigation concerning the Olympic Theatre, some time ago? A. Yes, sir; a portion of the time.

Q. What was the name of the suit? A. The case of Bolles, Receiver, against Duff, Receiver.

Q. What personal part did you take in conducting the case, and on which side? A. On the side of Mr. Duff, the Receiver.

Q. What part did you yourself take in conducting the case? A. In my office?

Q. Yes, sir. A. My department in the office is the office portion—the inside portion. I rarely go into the hall.

By Mr. TILDEN :

Q. The domestic department? A. Yes, sir; that is the case (producing a large bound volume); that is the office copy of all the memoranda and points, on each side, motion papers and every thing of that kind.

By Mr. CURTIS :

Q. When the theatre had passed into the hands of the Receiver, was an application made before Judge Barnard for direction and orders in regard to its being rented? A. Yes, sir.

Q. Will you describe the proceedings that were had so far as they took place before Judge Barnard? Give an account of the bids, and give an account of the facts which were before him and governed the exercise of his discretion in directing the lease of that building? A. I will endeavor to do so. Do you refer to the first or second application?

Q. To the first. A. I have here the printed case in the Court of Appeals, on the application that was made. It was made in the month of May, 1868.

Q. The first application for renting the building? A. Yes, sir. It will be necessary to state, to enable you to understand, what occurred earlier. This was an old litigation. The case had been many years in litigation. My office, originally, had nothing to do with it. It was originally in the hands of other parties. About the year 1867, I should judge, my office was associated with Mr. John Graham, who had been the counsel of Mr. Duff, Receiver. There had been a litigation commenced connected with the ownership of the Olympic Theatre, and it had resulted in a judgment at Special Term of the Supreme Court, holding that Mr. Duff, who claimed to have been the purchaser, was a mortgagee in possession only, and was therefore liable to account; and an order had been made that, as

to the further leasing of the property, it could only be by application to the Court—if there should be further leasing of the property, it could not be without an application to the Court. All that had occurred before my office was connected with the case. I wish to state that I had no part in the original matters connected with it. About that time, in the month of May, as I see by the papers (I should not have recalled the month, although I might the year), I made an application—or rather an application was made to the Supreme Court, returnable on the third Monday in May, why the property should not be leased to Mr. James E. Hayes, who was then the lessee of the theatre, for a further term. That application was founded upon a petition to the Supreme Court, and an order to show cause, with a variety of exhibits and papers annexed to the petition, and affidavits of various theatrical people, such as Mr. Wallack, Mr. Barney Williams, and people of that kind, who might be called experts in these matters as regards the value of the property.

Q. You mean its rental value? A. Its rental value. The application was made. Mr. Hayes, in his petition, set forth that he had expended, during the previous term, a large amount of money, about \$20,000, if I remember aright, in embellishments and other matters, to the theatre, which had improved the property, and he made an application for a lease of the theatre, on the idea that he ought to have a lease of the property at about \$12,000 a year. There were affidavits on the other side used on the motion. The motion was heard. The affidavits on the other side showed a higher estimate of value, somewhere in the neighborhood, I think, of an average of about \$20,000, whilst Mr. Hayes' offer was about \$12,000, or in that neighborhood. We were acting, at that time, in behalf of the Receiver, and we made the application on behalf of the Receiver.

Q. For leave to rent? A. For leave to continue the lease to Mr. Hayes.

Q. The lease to the former lessee? A. The former lessee, who had then, as he said in his petition, improved the value of the property, and got up a good character for the theatre—as good as theatres may be supposed to have.

By Mr. TILDEN :

At the same rent? A. I cannot say what the previous rent was. I do not know. At any rate, our affidavits were those of Mr. Wallack, Mr. Barney Williams, Mr. Harrison, Mr. Hayes, and others.

By Mr. CURTIS :

Q. All theatrical people? A. Yes, sir; all in the theatrical line. There were affidavits on the other side. Then Mr. Duff went on in his petition, or Mr. Hayes' offer, which is annexed to

it as an Exhibit, went on to show that he had expended, in permanent improvements, \$12,331 during the term that he had been there, and that he had paid for scenery and decorations in the theatre \$9,600, which would make about \$22,000. The other side had some affidavits, I think, about the same number as our own, showing offers to rent as high as \$20,000, but they were from people that we claimed would injure the property, or injure the character of the property. They were persons we did not think were up to the standard of persons that ought to have the theatre, and the result of it was that the order was made on the 3d of August, 1868, by Justice Barnard, to lease the property for three years, from the first of September, at \$15,000 a year, payable monthly in advance, the lease to contain such covenants as to rent, payment in advance, &c., and that it should contain the following stipulation: "that during the term of the lease, the lessee shall put, and maintain in repair, except such repairs as might be necessary through injury by fire, and that he release to the estate of the Receiver all claims that he had previous to that, by reason of repairs or house embellishments, made as heretofore, and that he will not permit any liens on the property." The result was, that he was to have a lease for \$15,000 a year, and he was to give up and release all his claims to the embellishments and improvements he had made upon it during his previous term.

Q. That was to continue for three years? A. Yes, sir; for three years.

Q. That was the first leasing? A. That was the first leasing.

Q. Upon order of Judge Barnard? A. Upon order of Judge Barnard. That was the only leasing of that character.

Q. Go on to the next one? A. This lease underwent a good deal of litigation during the three years.

Q. Describe it, if you please. Did the lease undergo any modification in consequence of the action of Judge Barnard? A. No, sir.

Q. It stood? A. Yes, sir.

Q. Throughout the three years? A. Yes, sir. I will state all about it, if you will allow me.

Q. State it as short as you can? A. There being an order for this lease, and the lease being executed, an appeal was taken to the General Term of the Supreme Court.

Q. By whom? A. By the Receiver—the Receiver of the judgment creditors—Mr. Bolles, who represented the judgment creditors of a man by the name of Trimble, who had been the original owner of the leased property.

By Mr. PARSONS:

Q. Was not Bolles the party who had opposed the motion for leave to lease the property? A. Yes, sir. He was the Re-

ceiver of the judgment creditors. There was an appeal taken to the General Term, and then the point was taken at the General Term, first, that the order was not an appealable order, and second, that it was right on the merits. A majority of the General Term reversed the order, but at the same time holding the lease as to a portion of the term, and reversing it as to the balance of the term—sustaining Judge Barnard as to a portion of the term, and reserving it as to the balance. Both parties appealed to the Court of Appeals from that decision, and when we got to the Court of Appeals Judge Lott delivered an opinion in which he dismissed both appeals, holding that it was not an appealable order to the Court of Appeals—that neither was appealable to the Court of Appeals. We went back then to the General Term, and insisted that if we could not appeal to the Court of Appeals they had no right to appeal to the General Term, and applied for and obtained a reversal by the General Term, of the opinion of the General Term. It was decided that under the decision of the Court of Appeals the order was not appealable, and they affirmed the original order of Judge Barnard, upon which the other Receiver went up to the Court of Appeals again, where they reversed us again, on the grounds that whilst the order might be appealable to General Term it was not appealable to the Court of Appeals. By that time we had consumed about three years in the different discussions on both sides, and on the different appeals. That is the history of the first application. As the three years was about expiring, in the Summer of 1871, the last year, I was requested by my client to make another application and I made an application.

Q. You mean Mr. Duff? A. In behalf of Mr. Duff. My application at that time was not in the form of the other, but it was an application that the order be made directing the lease of the premises to such persons and upon such terms and conditions and for such a length of time as to the Court might seem proper. Those papers were drawn and served in the month of June, 1871, and they were made returnable on the 3d Monday of June, 1871. On the 3d Monday of June, 1871, which was the 19th day of June, I was under the necessity of going myself—to go down in the Court—although ordinarily it is the business of Mr. Vanderpoel, who had sailed for Europe on the 17th. I went in and the cause was called in its order on the calendar, and I made my application, whereupon Mr. Thayer, who was counsel for the other Receiver, applied to have it postponed and an order was so made, which I hold in my hand, dated June 19th, postponing the hearing of the motion until June 30, at 10 o'clock, and ordering also that the opposing affidavits on the part of Mr. Bolles, be served on or before the 28th of June. That was according to Mr. Thayer's application. The motion stood adjourned from the 19th to the 30th of June. I was not able to be there on the

30th of June. Mr. Vanderpoel was in Europe and my family had arranged to go to Newport for some time before the 30th. I was compelled to leave the papers on the application with one of the juniors in the office, Mr. Bookstaver, who, on the 30th, attended and presented the papers. But Mr. Thayer read a variety of papers, a large bundle, and the case was submitted at the close of the Term—it was the last day of the Term, I believe—of Judge Barnard. I remained in Newport all Summer, and when I came back I found that the motion was decided and the order entered.

Q. What was the decision? A. It was an order referring it to a Referee to ascertain what should be the terms and conditions.

Q. After it went to the Referee did you follow it? A. No, sir. It has remained there ever since.

Q. Is it there now? A. Yes, sir. There have been various reasons why it was not necessary to progress with it. There has been no disposition, apparently, on the other side, or desire to go on with it; and as we were paying \$15,000 a year, which we deemed the value of it, and no more than the value of the property, we did not care about urging it.

Q. Where is this property? A. It is in Broadway, between Houston street and Bleecker street. The property is rather run down at present.

Q. It is now under lease at how much? A. At \$15,000 a year. Mr. Hayes holds over under the original lease.

Q. Is it still *sub.judice* as to whether there shall be a new lease or not? A. Yes, sir.

By Mr. TILDEN :

Q. What was the date of this lease you have spoken of. A. The first of September, 1868. It was the first one upon which application was made to the Court.

By Mr. CURTIS :

Q. The only judicial act which Judge Barnard has done in regard to leases of the property was in 1868? A. In 1868, except he ordered a reference. What he might have said upon the coming in of the Referee's report, I do not know. I have stated all the dates and facts and circumstances exactly as they occurred.

Q. In fixing this rent at \$15,000 a year, did or did not Judge Barnard, in your judgment, exercise a sound judicial discretion upon the facts before him, in a proper manner? A. I always deemed that he did.

Q. Do you know of any ground or reason he could have had for favoring any person in particular for fixing the rent of that property? A. No, sir, I am not aware of any.

Q. Do you know that Judge Barnard, at the time the lease

was originally fixed, knew Mr. Duff at all or had any relations with him? A. I do not know—I may have heard.

Q. You are not aware that he had any? A. I am not aware one way or the other on the subject.

Q. Did Mr. Duff ever speak to you in any way which would lead you to infer that his wishes in regard to it, whatever they might be, would stand a better chance before Judge Barnard than before any other Judge? A. No, sir; on no occasion. In addition to the rent, the lessee of the building was, by the order, to give up twenty odd thousand dollars of claim that he otherwise would have had and which was turned in, in taking that lease, and which would amount up to the highest rent offered by the other side. The offers on the other side were coupled with conditions.

Q. Were those improvements, many of them, of a permanent character? A. Yes, sir; they are sworn to in items annexed to the petition.

Q. Was the greater value those of a permanent character? A. I think \$13,000 out of \$20,000 were of a permanent character. There is a schedule of them annexed to the petition. It was never contradicted; there was never a dispute on the subject.

Cross-examined by Mr. PARSONS :

Q. Will you, as a lawyer, say that Mr. Hayes had any right to remove those embellishments and improvements of which you have spoken? A. I suppose he had. There were scenery, matters of that kind, in addition.

Q. I speak of the embellishments and improvements which you have stated to be of a permanent character? Will you, as a lawyer, say he had any valid claim for their removal? A. I cannot recall my views in relation to it and I can only refer you to what is stated on his petition and the character of those things, and you can judge probably as well as myself on that subject. They are detailed on the petition.

Q. Is that the best answer you can give? A. Probably the best answer I can give at this moment, without further consideration.

Q. You have said the majority of the General Term, on the original appeal from Judge Barnard's first order, reversed that order? A. Reversed it.

Q. Did the minority of the Court dissent from the decision of that General Term? A. It did.

Q. Who was the minority of the Court that dissented? A. Judge Barnard. They reversed it as to a portion of the term, not as to the whole term.

Q. Was not the reversal complete except as to the portion of the term that had expired before you could get it to argument at the General Term? A. No, sir, I think not. I should prefer to look at my book before answering you.

Q. Do you not remember that the reversal was complete except as to the first year of the Term? A. It was, except as to the first year of the Term.

Q. When was the argument at the General Term? A. In January. The order was made as early as January, 1869, and the first year of the Term would not expire until September, 1869. They sustained it until the following September.

Q. Do you not remember that the offers which Mr. Thayer presented in opposition, were offers for a Term beginning on or about the first of September, 1868? A. I judge they were. I have them here.

Q. Was it possible that those offers should be accepted in January, 1869? A. Certainly not. It would be impossible to do it, because they were offers that were made about the time of the motion.

Q. Then was it not necessary, that the General Term should acquiesce in the first year of the Term? A. I say not. They could have reversed the order absolutely, I suppose. If they could reverse it in part, they might reverse it altogether. I know of no reason why they might not.

Q. Would that have affected a new lease to any other person than Hayes, such an absolute reversal? Was it not impossible to avail of the offers which Mr. Thayer had presented, at the time of the argument at the General Term? A. Clearly at that time, when the reversal was made, because those offers had been made the previous season. They were made in view of the motion. They were made after the motion was noticed.

Q. Did the General Term reverse the order upon the ground that there were offers at a larger rent to Duff, which should have been accepted in preference to the lease to Hayes? A. They largely went, as I understood them, upon various matters, which Mr. Thayer, after the motion had been argued and heard and submitted to Judge Barnard, various papers and offers were by him sent into the Judge's house after the motion had been submitted and argued—heard on all sides, he sent various papers, which he claims should be used upon the motion. We objected to those papers, and hold it was irregular and improper that they should, but a majority of the General Term chose to consider that the Judge ought to have taken them into consideration, although we had had no opportunity to have answered them.

Q. Were those things the General Term held the Judge should have taken into consideration, offers at a larger rent? A. Offers at a larger rent.

Q. Did you, as counsel for Duff, Receiver, object that the Court should be in possession of offers at a larger rent. A. We objected to the irregularity and the indecency of sending in papers to a Judge after the case had been heard upon papers served upon the other side, and then heard on papers read and the motion had taken some time to be argued, and after it had

been submitted we objected to the impropriety of papers being sent to a Judge privately after that time.

Q. When the General Term, by reversing the order of Judge Barnard, had provided for a lease at a larger rent, did you, for Duff, as Receiver, take an appeal to the Court of Appeals? A. We did, and the other side took an appeal to the Court of Appeals.

Q. Were you aware at that time that Mr. Hayes was a son-in-law of Duff, Receiver? A. Perfectly.

Q. Was not the interest of Duff, as Receiver, without any reference to any individual interest he had, but simply as Receiver, to rent on the most favorable terms? A. Yes, sir; for that period it was.

Q. And yet you appealed to the Court of Appeals from the order of the General Term? A. We did appeal.

Q. Did you appeal upon the same ground upon which you had objected that those offers should be received which Mr. Thayer submitted after the hearing of the motion. A. That probably would have entered into the matter, but we were all dismissed from the Court of Appeals on both sides.

Q. I am speaking of the appeal you took to the Court of Appeals. Did you appeal on the same ground of indecency which you have stated as influencing you to object that those offers should be entertained by Judge Barnard. A. I can only answer that in this way; that in getting into the Court of Appeals, if we had been left to be heard, we should have objected to the using, on the appeal, of any of those papers, as forming no part of the motion papers.

Q. And that you would have done as representing Duff, Receiver? A. As representing Duff, Receiver, we should have done that. It was no part of it.

Q. Did not the Court of Appeals, on the final appeal to that Court, reverse Judge Barnard's first order granting a leave of lease to Hayes, upon the ground that though the application was to the discretion of the Judge, it was not his arbitrary discretion, and that he had no right, in the exercise of such discretion as the law conferred upon him, to permit a lease at a less, when there were offers from responsible parties of a larger rent? A. No, sir; I have the opinion here, and there is nothing of that kind in it. It is the opinion of Judge Lott.

Q. I speak of the opinion of Judge Grover upon the last appeal? A. I cannot recall that, because they held it was not an appealable order.

Q. The Court of Appeals on the last appeal to that Court? A. Yes, sir; they held it was not an appealable order.

Q. How happens it, then, that the case is back in the General Term, and the General Term, in obedience to the decision of the Court of Appeals, were compelled to reverse their former decision? A. I have explained that. .

Q. Look at Judge Grover's opinion, and see what the Judge says? A. I don't know that Judge Grover's opinion is here. I have the opinion of the Court, which is Judge Lott's.

Q. I am speaking about the last appeal, when the Court of Appeals reversed the General Term, in holding that there was no appeal from Judge Barnard's order?

Mr. NILES:

When they heard the case?

WITNESS:

When they heard the case finally?

Mr. PARSONS:

Yes.

WITNESS:

I don't know that I have Judge Grover's opinion here.

By Mr. PARSONS:

Q. Was there any ground upon which the Court of Appeals, on that appeal, could reverse the decision of the General Term, except the ground that Judge Barnard ought not to have made the lease to Hayes, and should have entertained the larger offer? A. They only reversed it then, on the ground that it was not an appealable order.

Q. How is it possible that the Court of Appeals should reverse the first decision on the ground that it was not appealable?

[Not answered.]

Q. Was not the decision of the Court of Appeals on the last appeal to that Court put upon the very ground that, though the application for leave to rent was an application to the discretion of the Judge, it was not to an arbitrary discretion, and that he had no such arbitrary discretion as permitted him to direct a lease at a less, when there were substantial offers of a larger rent? A. I should think not, but I have not that opinion here. I don't know that I ever saw it.

Q. Can you suggest any other ground upon which the Court of Appeals, on the last appeal, could reverse the General Term, except that Judge Barnard's order was wrong? A. I can't tell you; I don't know; I don't recall the opinion.

Q. Can you suggest any other ground upon which the Court of Appeals, on the last appeal, could reverse the General Term, except that Judge Barnard's order was wrong? A. I would not dare to speak without the opinion before me. I have Judge Lott's opinion.

Q. Can you, as a lawyer, and the very lawyer in the case and for the defeated party, suggest any reason upon which the Court of Appeals could reverse the General Term, except that Judge Barnard's order was wrong? A. I presume I can.

Q. Was it wrong in any other respect than that the leave given was to lease to Hayes upon the terms upon which he was permitted to take the lease? A. I presume that is the ground, although I can't speak without the opinion before me.

By Mr. NILES :

Q. Don't you recollect that this was the point made, that a Judge had no discretion to direct a lease by a Receiver at a less rent, when a larger rent was offered by responsible parties, with securities? Was not that the point made on the appeal? A. Well, it may have been; I can't recollect without the opinion. I am not aware that I ever saw the opinion.

By Mr. PARSONS :

Q. Will you be so good as to state to the Committee what was the expense to the Receivership of Duff, of the litigation consequent upon Judge Barnard's order directing the lease to Hayes, from which you took an appeal? A. That is more than I can tell you at the present time; I can't tell you.

Q. I want to know how much the expense was? A. I can't tell you.

Q. Will \$10,000 cover it? A. Yes, sir.

Q. Will \$5,000 cover it? A. Yes, sir; I think so.

Q. Will you state that positively? A. I should think that was full, and more.

Q. Will \$3,000 cover it? A. That department of it—that part of the case?

Q. Yes. A. I should think so; I can't say positively; I can't tell.

By Mr. NILES :

Q. Were they not over \$16,000 connected with that lease? A. No, sir.

Mr. CURTIS :

Mr. Parsons is inquiring what expense to the Receivership this decision of Judge Barnard granting the lease entailed.

Mr. PARSONS :

Through the action of the Receiver himself in insisting upon the privilege of leasing at a less rent than that which responsible parties were willing to offer.

By Mr. PARSONS :

Q. You didn't mean to say that the papers submitted by Mr. Thayer, after the hearing of the first motion, were sent to Judge Barnard's house, or were there left with a servant girl? A. I have not intended to say that; I merely intended to say those supplement papers were sent to him some time after the motion had been argued and submitted to him.

By Judge BARNARD :

Q. You had no knowledge of it? A. I had no knowledge of it.

By Mr. PARSONS :

Q. You were not the attorney in the case for Duff? A. No, sir, I was not; we were acting as counsel; John K. Hackett was the attorney on the motion.

By Judge BARNARD :

Q. Was any paper ever served on John K. Hackett? A. Not that I know of; we acted entirely as counsel in the matter, and if the papers had been directed to us they would have been sent to us.

By Mr. PARSONS :

Q. Mr. Thayer has stated positively that those supplemental papers were served upon Mr. Hackett, with a notice of the time and place when they would be, and when, according to his testimony, they were submitted to Judge Barnard. Are you able to contradict that statement? A. I cannot say as to that part; I cannot recall days or weeks exactly, in relation to that; I only know it was subsequent, and it formed a matter of discussion on the appeal.

JAY GOULD re-called; examined by Mr. STICKNEY :

Q. Have you ever had any pecuniary transactions with Judge Barnard? A. No, sir.

Q. Have you ever paid him any sums of money? A. No, sir.

Q. You are perfectly positive on that point? A. I remember nothing.

Q. Can you be sure that you have not? A. That is my recollection.

Q. Can you be sure? A. Yes, sir.

Q. Have you ever loaned him any sums of money? A. Not that I remember of.

Q. Can you be sure that you have not done so? A. Well, I think if I had I should have remembered it.

Q. Can you be certain that you have not? A. I don't remember any.

Q. Is that the best answer that you can make to the question? A. Yes, sir.

Q. Can you be certain that you have not, at any time, paid any sum or sums of money to Judge Barnard, either by way of loan or on account of any matter whatever? A. I have not the slightest recollection of ever having a money transaction with him in the world.

Q. Can you be sure that you have not done so? A. I am as positive of it as I am that I sit here.

Q. You are? A. Yes, sir.

Q. There can be no mistake about it? A. No, sir.

Q. Has Judge Barnard ever received any money that came from you on account of any matter or transaction whatever? A. Not that I know of.

Q. Can you be sure that he has not? A. That is my recollection. I recollect no transaction with him at all. Not the slightest.

Q. Did you ever give or deliver money, or anything of value, to any one to go to Judge Barnard? A. Not that I remember of.

Q. Can you be positive that you have not done so? A. I don't remember to have had a money transaction with him in the world, either directly or indirectly.

Q. Did you ever give or deliver money, or anything of value, to any one to go to Judge Barnard? A. Not that I know of.

Q. Can you be positive that you have not done so? A. No, sir.

Q. You have never done so? A. No, sir.

Q. You were subpoenaed to produce your check and deposit books, on the Tenth National Bank, for the year 1870 and 1871. Have you produced them? A. I have not.

Q. Where are they? A. They are destroyed.

Q. Are all of your check books on that Bank destroyed for those years? A. All of 1870 and 1871.

Q. Are all of your deposit books destroyed on the Bank for those two years? A. The deposit books I could not find. I don't know where they are. The check books I never save.

Q. When were the check books destroyed? A. Whenever I have a book used up I throw it away.

Q. Has that always been your custom? A. Always been my custom.

Q. For how many years has that been your custom? A. I don't remember.

Q. Have you destroyed all of your return vouchers for two years on that Bank? A. Yes, sir; I never save them.

Q. When were those destroyed? A. I usually destroy them when I get them back from the Bank.

Q. Is that your custom? A. Yes, sir; sometimes they accumulate for awhile, and then I go over my desk and make a general sweep.

Q. How long has that been your custom, to destroy your return checks? A. I don't know how long it has been my custom.

Q. Have you no knowledge or recollection upon that point?

A. I have never been in the habit of saving my checks.

Q. Never in your life? A. No, sir.

Q. Have you destroyed your deposit books on the Tenth Na-

tional Bank for those two years? A. I don't know whether I have or not. I could not find them.

Q. What examination did you make for them? A. I looked over my papers.

Q. How long an examination did you make? A. I looked over them last when I got your subpoena.

Q. How long an examination did you make? A. It didn't take me long, for I had not many papers to go through.

Q. Where did you look for them? A. In the house. As I remember it now, when I moved away from the Erie office the other day, on looking through the drawer I saw some checks there, and stubs, &c., and I made a general sweep of them at that time, which included everything but the check book I am now using, which was commenced but a short time ago.

Q. These stubs that you saw there had not then been destroyed previously? A. There were some there that had not been on the book, I think.

Q. Then it has not been always your custom to destroy your check books? A. Yes, sir; it always has been, at stated intervals.

Q. You found this one that had not been destroyed? A. Yes, sir.

Q. Have you any recollection of what bank that was on? A. That was on the Tenth National, I think.

Q. For what period? A. I don't remember.

Q. Was it for part of the year 1870 or 1871? A. My recollection is, it was just used up.

Q. How long since? A. Perhaps a month or so.

Q. Have you ever received any money, or anything of value, from Judge Barnard yourself, or that came from him? A. Not that I remember of.

Q. You have no recollection of anything? A. No, sir.

Q. Have you any accounts or memoranda, or papers of any kind, which will enable you to ascertain whether you have or not? A. No, sir.

Q. Have you any means of ascertaining whether you have or not? A. No, sir.

Q. Have you ever received from Judge Barnard anything by way of return of any loan made by you to him? A. As I said a moment ago, I have not the slightest recollection of ever having a financial transaction with him.

Q. And you have no means of ascertaining, in any way, whether you had or not? A. No, sir.

Q. Did you at any time, in the month of July, 1871, draw your own check of \$3,000 on the Tenth National Bank, and deliver it either to Judge Barnard, or to any one for him, or to any one to give to him? A. Not that I remember of.

Q. Have you any means whatever, by books, papers, memo-

randa, or anything else, of ascertaining whether you did or not? A. No, sir.

Q. If you did draw a check of \$3,000, either for Judge Barnard, or which ultimately went to him, in the month of July, 1871, have you any means of ascertaining what it was paid for, or where the money came from to you? A. No, sir; I have not.

Q. And you have no recollection of any kind, on the point, yourself? A. No, sir; I have not the slightest recollection.

Q. And if you made such a payment to him, or made such a payment that went to him, have you ever received any repayment of any such amount from him, either in money, checks, or in property, or in goods of any kind, or in any way? A. As I said a moment ago, I have not the slightest recollection of ever having a financial transaction with him. I think that covers the whole point. You are stating suppositions. As I told you, I don't remember of ever having had an official transaction with him, either *pro* or *con*.

Q. Can you speak positively on the point, whether there ever has been a repayment or payment of such sum, by Judge Barnard, or from Judge Barnard, directly or indirectly to you? A. I have no recollection on the subject.

Q. Can you speak positively? A. Yes, sir.

Q. That there has been or has not been? A. I say I have no recollection on the subject.

Q. Can you say positively there has not been? A. I say I have no recollection on the subject.

Q. Is that the best answer you can make? A. That is the best answer I can make.

Q. Has Judge Barnard, as far as you know, ever been connected in any way with the payment of any money from the Erie Railway Co. or from Mr. Fisk, or from yourself, or from any one having any connection with the Erie Railway Co. or with Mr. Fisk or yourself? A. No, sir.

Q. Have you ever known of any presents made to Judge Barnard by Mr. Fisk, or by yourself, or by any one connected with the Erie Railway Co.? A. To him.

Q. Yes? A. No, sir.

Q. Have you ever known of any presents being made to him? A. I don't know but I gave his daughter some little piece of silver once; a birth-day present, or something; I don't recollect whether I did or not.

By Mr. CURTIS:

Q. A child? A. Yes, sir; I don't recollect the details of it.

JUDGE BARNARD:

It was a thousand dollars, and it is in the Citizens' Saving Bank.

WITNESS :

My recollection is, that I thought that it was a piece of silver, given as a birthday present, or something, to his child.

JUDGE BARNARD :

It was at a christening.

Q. As your memory is now refreshed by what Judge Barnard has stated, give the particulars of this matter which has been mentioned ? A. I cannot give any particulars ; I think my idea was, that it was to be a piece of silver that I was to give.

Q. Have you any recollection of the fact ? A. I didn't do it myself.

Q. Did you have any knowledge of it ? A. I had no knowledge of it.

Q. Do you know whether Mr. Fisk arranged any such present ? A. I think Mr. Fisk did.

Q. To whom ? A. To his daughter at a christening.

Q. To Judge Barnard's daughter ? A. Yes, sir.

Q. Do you know what the amount of that was ? A. I don't remember what the amount of it was.

Q. Was it about a thousand dollars ? A. I don't remember about it ; I never thought of it from that day to this.

Q. And is that the only present of the kind that you have any knowledge or recollection of ? A. Yes, sir.

Q. Of any kind ? A. Yes, sir.

Mr. STICKNEY :

We produce the Chamber minutes of Judge Barnard, of the Supreme Court, for the months of August and September, 1869, from which it appears that Judge Barnard was in Court on the 2nd of August, and the 3rd of August, and from that time he was not present until the 11th of August.

The CHAIRMAN :

In connection with what is that ?

Mr. STICKNEY :

The Susquehanna claim. Then we produce the Chamber minutes of Judge Ingraham, which show that he was present, and held Chambers on the 4th, 5th, 6th, 7th, 9th, and 10th of August, 1869. Then we produce the Chamber minutes of Judge Clerke, showing that he was present, and held Chambers on the 6th and 7th of September, and later days.

WILLIAM A. BEACH sworn ; examined by Mr. CURTIS :

Q. You are a counsel and attorney at law in this city ? A. Yes, sir.

Q. You have resided here how long; and practiced here how long? A. Something over 18 months—nearly two years.

Q. Your residence before was Troy? A. Troy, Renssellaer County.

Q. Did Judge Barnard hold the Troy Circuit in 1861? A. About that period I recollect him holding that Circuit.

Q. Were you acquainted with him personally then? A. Yes, sir.

Q. And with his judicial character? A. Yes, sir.

Q. Have you known of his judicial character ever since? A. I have seen him, but not very much since 1861, personally, until I removed to the city, though I have heard of him through my personal and judicial friends since that time.

Q. Since you have been a resident of this city, and a member of the bar of New York, has not your practice as an advocate and counsellor been somewhat extensive? Yes, sir; somewhat so.

Q. Engaged in a good many litigations of weight and importance? A. Yes, sir.

Q. Have you had occasion and opportunity to know the estimate in which Judge Barnard is held as a Judge by the members of the bar? A. Well, I think I have, to a reasonable extent. I have heard considerable discussion of the judicial character of Judge Barnard, and opinions to a very large extent expressed by members of the profession.

Q. Have you heard such opinions expressed by laymen, also? A. Yes, sir.

Q. Have you ever heard any one accuse Judge Barnard of pecuniary corruption as a Judge? A. Never. I think I ought to say in addition, that on the contrary, whatever unfavorable expressions may have been expressed by any person present, in regard to the removal or qualifications of Judge Barnard, I have never heard anything like corruption attributed to him in the sense in which you have spoken.

Q. Were you counsel in the suit brought by Mr. Fisk, in which 60,000 shares of the Erie Railway stock claimed by Heath & Raphael, were made a subject of Receivership? A. Yes, sir; I became connected with that litigation as to a portion of the defendants, after it was removed into the United States Court, and some time after. I was not engaged in it during the pendency of it as an entirety in the State Court.

Q. Did it become your professional duty, in that case, to examine the cause of action, and to acquaint yourself with the merits of the case? A. It did, although I ought, perhaps, in explanation, to say that my connection with the litigation in the United States Court, commencing after there had been an effort which was pronounced ineffectual by the Court, to discontinue the case, and there never has been, so far as my knowledge extends, any trial of the merits of the litigation.

Q. But you have an acquaintance with the merits of the litigation? A. Oh yes, sir; I have examined it.

Q. Will you describe to the Committee, briefly, the cause of action in that case, and its merits on the part of the plaintiff—the object and purpose of the suit? A. According to my understanding, the theory and the allegations of the client were, that there was an extended conspiracy on the part of prominent bankers, both in London and on the Continent, to obtain the control of the stock of the Erie Railway Co., and to manage it in the interest of foreign stockholders, procuring a Board of foreign Directors. A branch of the complaint charged that that design was entertained by these foreign bankers in connection with certain American bankers and railroad operators. As I understand the complaint, it had a double allegation of conspiracy, and a double aspect. One branch of it charged that it was the design of Commodore Vanderbilt and his friends, who were alleged to be the owners of the New York Central & Hudson River R. R., connected with a Continental line of railroads running Westward, to obtain control of the Erie Railroad, to interrupt the design of its then present management to make that also a great through thoroughfare from the Pacific to the Atlantic, and to reduce the Erie Railway to its original trunk line, and make it comparatively a local thoroughfare. It was alleged that in pursuance of that purpose the firms of Heath and others and Raphael & Sons had procured a regulation of the Stock Boards of London and of Paris, by which no certificates of the Erie Railway should be current or deliverable in the market unless they had passed through the hands of one of these firms—either Raphael & Brothers or Heath and others, and receive their stamp. It was also alleged that these firms refused to give to these certificates authenticity unless there was a payment of a certain per cent. upon the par value of the shares. I am not certain, now, that the amount was alleged in the complaint. I have understood it was about a shilling sterling upon each share. It was also charged in the complaint that neither of these firms, nor any of the parties engaged in this attempt by this stratagem to obtain the control of the Erie stock were the real or the *bona fide* owners of that stock; that by the rule adopted upon the London Stock Market and upon the Bourse in Paris, that they could be constantly turning over the stock which they received in trust, and which received their stamp, by exchanging it for other certificates which had not passed through that manipulation, and without the advance of any money, and without any real ownership of the stock, they might, in course of time, become the entire nominal owners of the certificates; and that their purpose was then to present, as they obtained, gradually, control of the stock, the certificates of the Erie Railway Co., and to procure the transfer on its books to their name, and procure

their registry from the North American Trust and Banking Co., I believe, which would make them the owners of the voting power of the stock; and it was charged in the bill that this was a fraudulent conspiracy, injurious to the prospects of the road, and with the intention and purpose of preventing the carrying out of the policy which was endeavored to be effectuated by the then present management of the road, in extending its connection to the West, and the Mississippi and Missouri rivers, and the granaries of the West. That is as full a compendium as I am able to give from present recollection.

Q. From your information, which you obtained as counsel in connection with that case, is it, or not, your opinion that it was a case fit to be litigated, and brought before the Court for adjudication? A. Yes, sir.

Q. Have you any doubt about it? A. I have not.

Q. Did you become acquainted with the steps that had been taken in the litigation before you came into it? A. Not very intimately or particularly. My duties in connection with the litigation did not lead me to a critical examination of the steps which had been taken in the State Court, although I was obliged to make myself acquainted with the general merits of the litigation, and with the general course of practice prior to my connection with it.

Q. Did you learn the fact that a Receiver had been appointed, in the State Court, of 60,000 shares of stock? A. Oh yes.

Q. The certificates of which were on this side of the water, and that were involved in that litigation? A. Yes, sir.

Q. That fact came to your knowledge, and you had occasion to examine that part of the case, had you? A. Yes, sir. That was the first fact that was brought to my attention, almost. My first connection with the case was, I think, just before or about the time that the proceedings were pending before the Master in the United States Court for the delivery of the stock to the claimants.

Q. Under the circumstances of that litigation, the nature and merits of the claim on the part of the plaintiff, in his own behalf and as representing other stockholders, was or was not the steps of that stock in the hands of a Receiver, in your judgment, and proper judicial action? A. I looked upon it as a necessary judicial action after the granting of the injunction.

Q. Was there any wrong, judicially speaking, in the granting of that injunction? A. Not in my judgment, not with my understanding of the case, and my conception of its character and object.

Q. If you had been connected with the case, or consulted about the case, previous to the granting of that injunction, and the appointment of that Receiver, would you have hesitated, as a lawyer, to have promoted those proceedings as a necessary and proper relief for the plaintiff? A. I should not.

Q. Do you know of any fact showing an intimacy, or such an intimacy, between the late James Fisk, Jr., and Judge Barnard, as justly to give rise to a suspicion that, in his judicial action in that matter, Judge Barnard was acting from any improper motive? A. I do not.

Cross-examined by MR. VAN COTT:

Q. Are we to understand by your answers on the direct examination, that you never heard judicial corruption imputed to Judge Barnard? A. I don't mean to be so understood.

Q. In what sense have you heard judicial corruption imputed to him? A. I have not heard it, except in a very general, indefinite and unspecific way. I never have heard any suspicion of the existence of any judicial corruption, within my personal recollection.

Q. Have you not heard it imputed to Judge Barnard, that he had made orders, had granted injunctions, and had appointed Receivers, improperly, and from an undue partiality to particular friends? A. I don't now recall any such imputation, and if I may be permitted to say, in explanation, according to my present recollection and belief, the most that I have heard said, in that direction, against Mr. Justice Barnard, was an imputation of favoritism in the appointment of Referees, and referring exclusively, I think, to Mr. Coleman.

Q. Do you remember the complaint in the case of the Erie Railway and James Fisk, Jr., *vs.* Heath and others, relating to the English foreign stock, of which you have spoken, sufficiently to say whether there is any allegation in the complaint that the plaintiffs own any of the stock which was the subject of the Receivership in that case.

Q. I am very sure that there was an allegation that James Fisk, one of the plaintiffs, was an owner of the stock, and that he had been forced, by reason of this stock regulation in London, to pay this assessment that was imposed upon the shares, for the purpose of making it current in the London market.

Q. Are you not confounding the complaint in the case I have named, with the complaint in the case of Fisk & Earl *vs.* Heath and others? A. I don't remember ever to have seen such a complaint. It is possible I may have been in error, in my recollection.

Q. Did you ever see the complaint of Nyce *vs.* The Erie Railway and others? A. No, sir; I am certain I never did.

Q. You are certain you didn't see the complaint of Fisk and Earl *vs.* The Erie Railway? A. I am quite confident I never did.

Q. Is there any allegation in the case of the Erie Railway & Fisk *vs.* the Heaths, to that effect, that Fisk or the Erie Railway owned any of the stock, of which the Receivership was appointed? A. I think not. I don't recollect of any, although I

ought to have added to that, perhaps, that Mr. Gould was a defendant in the action, and, in the course of the proceedings in the United States Court, he presented a petition, claiming to be the owner of a million of dollars, I think, of shares in the hands of the Receiver.

Q. Which claim, however, was not sustained? A. His claim was not permitted to be examined. Judge Blatchford, in one of his opinions on the interlocutory motions, or proceedings in the case, held that the parties who were the real owners of the shares in the hands of the Receiver, would be permitted to come in and make their claim, before there would be a delivery of the shares to Heath & Raphael, but upon a new petition, prepared and presented on the part of Mr. Gould, claiming ownership to the extent, I believe, of about twelve millions, Mr. Justice Barnard reviewed his opinion, and came to the conclusion that the litigation of their title ought not to be had here, but in the London Courts, and there was no real examination as to the alleged ownership upon the part of Gould and his friends.

Q. Was there any allegation in that complaint that Gould was the owner of any of it? A. No, sir; I think not.

Q. Was there any allegation in the answer put in in that case that Mr. Gould was the owner of any of that stock? A. My recollection at present does not enable me to state, though I can say when I came into the case I found a petition pending on the part of Mr. Gould, claiming the ownership and asking the Court to adjudicate it. Whether he put in a formal answer to that effect, or permitted a default and presented his petition, I am not able to say. I don't think I ever saw his answer in the case, if there is one. May I say that under the advice of counsel, before I was connected with the case, the plaintiff had made an ineffectual effort to discontinue the case, and when I took a position in the case, I moved to open the default, and was unsuccessful, and my services in the case were under the disadvantage of an existing interlocutory order or decree on the part of Mr. Justice Blatchford, adjudicating a delivery of the stock to Heath & Raphael, the English claimants.

Q. Was not the question that you think was intended to be raised and litigated in that suit so presented on the part of the plaintiff upon the record that it could have been litigated in that suit effectually? A. As to the parties who were in the United States Court, I suppose so; but for this abortive attempt to discontinue it, it might have been litigated in that cause, but, as I understood, the intention was to discontinue in that Court, and to litigate in the State Court as between the parties who remained in the latter Court.

Q. The order made by Judge Blatchford dissolved that injunction and discharged the Receivership, or directed the transfer of the stock to Heath & Raphael, did it not? A. No, sir; it continued the Receiver.

Q. Only for the purpose, however, of executing its general purpose to restore the stock to Heath & Raphael? A. I think that was the effect of the order.

Q. If there were any merits in the case on which an injunction could rest, or the appointment of a Receiver could rest, could not those merits have been litigated and determined on the motion to dissolve the injunction and discharge the Receivers? A. I don't think it could, in the attitude in which the plaintiffs had placed themselves by a discontinuance of the action. They rested, under the advice of certain counsel (whom it is not necessary to name), upon a formal entry or notice of a discontinuance of the action, without taking any further steps to perfect that proceeding, and I understood Judge Blatchford to hold that, nevertheless that attempt, the plaintiffs and the fund were under the control of his Court, and he should make a decree upon the idea of an abandonment of the case on the part of the United States Court on the part of the plaintiffs, directing the delivery of stock to the English claimants.

Q. That attempt of discontinuance was the voluntary act of the plaintiffs? A. I suppose so.

Q. And if they had chosen not to make that attempt, but to litigate the merits on that motion, could not the merits have been litigated there? A. Undoubtedly, and in that connection I beg leave to repeat that I did make an earnest effort before Judge Blatchford to get rid of that attempted discontinuance, and to be permitted to litigate on the evidence, but was unsuccessful in the motion.

Q. That attempt was made by you after the order of Judge Blatchford? A. Yes, sir.

Q. Do you remember that the injunction and the Receivership were ordered in that case at the beginning of June, 1869? A. I so understood.

Q. And did you not also understand that the next election under the Classification Act, to fill the offices of Directors who should go out under that Act, was to take place in the ensuing month of October? A. I am not aware of that; I am not familiar with the period of the election.

Q. Assuming that the election for three Directors under the Classification Act, could not take place until the ensuing month of October, was there any necessity for enjoining the transfer or the registration of stock in the meanwhile? A. I think so, sir.

Q. Was there not an opportunity to have tried the case on its merits, and to have finally disposed of the case on its merits, before October, if the case had been pressed? A. Certainly, but in the meantime the stock would have been transferred and registered and changed for new unstamped and unregistered stock, and the process of transmission and transfer of the stock and the creation of voting power upon the books of the Company would be continually going on.

Q. Was there any allegation in the complaint in that case, that any owner of any of the stock of which the Receivership was appointed, had involuntarily had that stock stamped by Heath & Raphael? A. No, sir; I think not. There was, however, an allegation in the complaint that the owners had committed this stock to the custody of those English firms upon a trust that it should be managed in support of the then existing administration of the Company, in case that, upon an investigation, the management should be approved, and that in violation of that trust these English brokers had united in this conspiracy for the injury of the Company. That is as briefly as I can express it, about the substance of the allegation.

Q. Except for the interest of some party to that suit, in the particular stock represented by Heath & Raphael, was not the remedy for any abuse of that trust limited to those who complained of the abuse? A. I think it would have been, unless for the theory of the complaint, which, in substance, alleged that there was a fraudulent conspiracy among the different operators in this movement for the distribution of the Erie Railroad, or at least for the destruction of its connection with the West.

Q. Was not this the substance of the allegations, in respect of the supposed conspiracy, that one class of the foreign holders of the stock wished the Erie Road managed in the interest of other roads in which they were stockholders, that the other class of holders of the foreign stock wished the stock managed in their general interest as speculators in stocks? Was not that the substance, and the whole substance, of the allegations as to the purpose of the supposed conspiracy? A. I think not, although there was an allegation in the complaint that the Erie stock was a speculative stock, and very largely employed in speculative operations, both abroad and in this country, and that this alleged conspiracy in one phase and with reference to one object of it was to be used to promote the private speculations of those parties. I am aware that my opinion differs strongly from other counsel who are entitled to high respect, and who are supposed to be favorable to the interest of the Erie Road, but it is my opinion, and I am compelled to express it.

Q. Are you entirely confident that those two general purposes of the alleged conspirators don't constitute the substantive allegation of a conspiracy, to wit, that one class of owners of stock wanted the road managed in the interest of other roads, of which they were stockholders, and the other class wanted the road managed in the interest of speculators in the stock? A. That, to my mind, is not the gravamen of the complaint, nor the ground of its merits, in my judgment, although, as I before intimated, there were allegations in the complaint to the effect that the owners of the rival through lines between the west and the east of this continent were intending to obtain control of the Erie Road, so as to

destroy its character as a through line, and limit it to its original trunk line, making it a local road, but I have not got the idea from my knowledge of the complaint, that the theory which you suggest was its substantial ground.

Q. Was it not stated in the complaint as the means by which the evil end, whatever it was, of the conspiracy, was to be attained, was the election of other Directors in place of the existing Board of Directors of Erie? A. That was one of the purposes of the conspiracy alleged, or one of the means by which the evil end, as you express it, was to be sought, by putting in new Directors in the interest of the conspirators, who were to be English Directors.

Q. Did not the complaint put it that whatever unlawful or improper purpose was sought to be attained was to be attained solely by the re-constitution of the Erie Board. A. Not solely, but it was to be accomplished necessarily through a reconstruction of the Board, because it was alleged that those purposes could not be reached under the then present administration.

Q. Can you specify any allegation in the complaint of any other mode by which the ends of the supposed conspiracy were to be attained than the change in the Direction. A. I know of no other means except by the change and course of policy which it was charged to be the intention of the new created Board to pursue.

Q. Assuming that a majority of the stockholders did desire the road to be managed in the interest of some other road, or to be managed in their interest as owners of, and speculators in, the Erie stock, do you think it falls within any head of equity to enjoin those stockholders against voting for such Directors as they may lawfully vote for in the exercise of a choice? A. Most certainly not, sir.

Q. Could a bill be sustained upon the general facts which you suppose to have been alleged in this complaint without an allegation that a material and controlling part of the stock had been obtained from its real owners by some fraudulent device or imposition, by which they had parted with their control of it? A. I think it might be upon an allegation that the control was obtained for the purpose of a trust for the aid of the stockholders and the Company, and that their trust had been violated, and that it was necessary to restrain the action of the Company and its Directors to prevent the consummation of the wrong.

Q. Didn't the scheme by which Heath & Raphael were made to stamp the foreign stock, leave the actual owners of that stock free to take possession of it, to sell it, and to execute proxies upon it, as far as that scheme is set out in that complaint? A. I do not so understand it. It is quite possible that I have confounded and mingled allegations in various complaints, and in the multitude of proceedings which may have been taken, and that my idea as to the theory and the allegations of the

particular complaint of which you have spoken is incorrect ; but I have got the impression, whether it is alleged in this particular complaint, or whether it is part of my knowledge, gained from an examination of all these proceedings, that there are allegations in some of the matters which have been brought under my observation in the prosecution of this litigation in the United States Court, that there were receipts or tickets issued by a protection committee, composed of the Heaths and others, which were exchanged for the original certificates, and those tickets were made marketable and deliverable in London and upon the continent, and that the result of this arrangement was, that the Heaths became possessed of the original certificates, and that the real beneficial holders had nothing but the receipts of the protection committee, which were used for the purpose of transmission in the operations upon the market.

Q. Do you understand that the arrangement by which Heath and Raphael became possessed of the stock was in the nature of an irrevocable trust or attorneyship as to that stock? A. I supposed there was no mode of revocation except by action.

Q. And, therefore, that they might vote upon that stock in perpetuity, without relief to the owners, except as the owners might prosecute that relief, by having the trust itself broken up? A. I understand so.

[The examination of this witness was here suspended.]

CORNELIUS S. BUSHNELL, recalled ; examined by Mr. PARSONS :

Q. You spoke, on your former examination, about the sum of \$50,000, arranged to be received by Mr. Fullerton. Did you have a conversation with Mr. Fullerton shortly after the receipt by him of that money, in reference to any use which might have been made of it? A. I could not say that it was in reference to its use. I met him afterwards, and asked him if our peace was assured.

Q. About how long afterwards was this? A. After I got back from Saratoga ; it might have been a week. It was the next time I met him after I got back.

Q. State to the Committee what his answer was? A. I cannot give his answer in definite words.

R. State it ; give the words as near as you can, but give the substance? A. It is my impression ; I don't like to swear that he mentioned any person's name, but that the party he handed it to, that the party to whom he gave it, had assured him that peace was assured, and that we were perfectly safe from trouble, and he remarked to me that the evidence that he thought he was right was, that this gentleman—he didn't say he had taken anything, but he saw him, or his young man saw him, go to the house of one of the Judges ; I can't say which one.

Q. Have you any recollection of the name of the person whom he mentioned as having gone to the house of one of the Judges, or of having sent his young man to one of the Judges? A. I am very confident, but I don't like to swear to it, that he spoke to me of a man of the name of Coleman.

Q. Was this within a week or ten days after the time Mr. Fullerton received the money? A. Yes, sir.

Q. Did you subsequently meet Mr. Fisk? A. Repeatedly.

Q. Had Mr. Fisk heard of this \$50,000 transaction, or anything in reference to a sum of \$50,000? A. Yes, sir; it was very current among our own people, and it was talked of; Mr. Bardwell, Mr. Durant, and Mr. Fisk alluded to it several times; we were very anxious to have all these matters out of the way; Mr. Fisk was very anxious to have them out of the way; he sent A. H. Aylmer to my house, and wanted I should come up to this hotel, and that this—

Q. During the time subsequent to the receipt of this \$50,000 by Mr. Fullerton, did these efforts to get the matter out of the way continue? A. This was more than a year considerably; it was after all these proceedings in the following March.

Q. What, if anything, did Mr. Fisk say to you as to whether he had received the \$50,000, or any part of it? A. I never discussed the \$50,000 with Mr. Fullerton.

Q. What did Mr. Fisk say as to whether he had received it? A. He said he never received one single dollar; that he paid out in expenses \$40,000, or thereabouts, and if I would only give him the \$40,000 that he had paid out to his attorneys and for expenses he would be most happy to withdraw the suit and all the annoyances.

Q. Did you ever meet Mr. Fullerton in this hotel, or elsewhere, when Mr. Fullerton said to you anything in substance or to this effect, that Mr. Fisk had broken faith with you, referring to that transaction? A. I do not remember any such conversation.

Q. Would you recollect it if anything of the kind had taken place? A. I think I should; but I would not swear that I should, because I met Mr. Fullerton a great many times.

Q. How confident are you in your recollection that nothing of that kind took place? A. I have not the least recollection of anything of the kind.

Q. How confident are you in your recollection that nothing of that kind took place? A. I don't know how to answer you; I don't have any recollection of any such remark.

Q. Do you feel positive in your own mind that nothing of that kind did take place? A. Yes, sir; I should say that.

Q. In the conversation when Mr. Fullerton named some person called Coleman, did he mention the name of a Judge? A. Yes, sir; but he didn't tell me what Judge.

Q. Did he give the name of a Judge? A. No, sir, he didn't

give the name; he said he saw him, or his man saw him, go into the basement of a Judge's house; I remember that part of the remark.

Q. And he said this in reference to the use of the \$50,000? A. This was when I asked him if our peace was secured; we didn't talk anything about \$50,000.

By Mr. CURTIS:

Q. This was when Mr. Fullerton returned to you, after he had received the money, that you asked him if your peace was secured? A. No, sir; I returned from Saratoga several days after this transaction; and knew that he had received the money and been paid the money, and I asked him then if our peace was secured—if we might go on feeling pretty safe—and this was his remark in reply.

Q. What was his remark? A. His remark was that we might feel perfectly secure; that he felt perfectly secure, as he thought what he had done had secured us beyond contingency; and then he spoke of himself—of seeing the party go to a Judge's house; I don't think he named any Judge at all to me; and he spoke about it—that he or his man saw him go into the basement.

Q. In continuing the conversation he said, did he, in confirmation of his opinion that your peace was secured, that he, or his man, had seen one Coleman go into the house of some Judge. Is that it? A. That is it.

Q. And into the basement of the house? A. Into the basement of the house.

Q. You don't intend, do you, to vary your former testimony given here, that neither you, nor so far as you know, any other person concerned with the Company, furnished Mr. Fullerton with that money, with any purpose that it should reach any Judge? You don't intend to vary your statement in that regard? A. No, sir; not at all.

Q. Did you consider at the time when Mr. Fullerton spoke to you about one Coleman having been seen going into the house of some Judge, that it had any connection with the payment of any part of that money to that Judge? A. Well, no; I can't say that I did; I took it for this, that the man with whom he had made this arrangement had such friendly relations that his influence was sufficient to procure us our peace.

By Mr. PARSONS:

Q. Relations with whom? A. His relations with the Judge were such that we should not be interfered with.

By Mr. CURTIS:

Q. And you supposed that one person to be Mr. Coleman? A. He mentioned his name. I don't like to put that, because I

forget names, and every one forgets names, but that is my best memory, that he mentioned Mr. Coleman's name.

Q. Are we to understand that he may have mentioned some other name? A. I don't remember any other name. That name is very strongly on my mind.

Q. Why? A. I don't know any reason, only that it is there; I can't give you any reason.

Q. May it arise from your having subsequently heard the name of Coleman mentioned as a friend of one of the Judges of this city? A. No, sir; it is because I never have heard that specially; I didn't know that he was any special friend of any Judge.

Q. You think that Mr. Fullerton mentioned that name, do you? A. Yes, sir; I am confident, so far as I can be confident, that he mentioned that name.

Q. And if he mentioned any name to you, you are quite confident, are you not, that it was the name of Coleman? A. That is the strong impression on my mind; I can't give it any better form than that.

Q. And you could not mention any other name that you think he did use? A. No, sir.

By Mr. TILDEN :

Q. At the time of this proceeding, was the Union Pacific R. R. Co. entirely responsible? A. Perfectly, sir; paying everything very promptly, bonds selling at 102.

Q. And stock? A. And stock from 75 to 80.

Q. How much stock? A. There was then about twelve millions of stock out.

By Mr. VAN COTT :

Q. I think you stated that before this \$50,000 was paid over to Mr. Fullerton, you had met Mr. Fisk, and he had told you that the orders were ready for the injunction, and the Receiver, and if you didn't come to terms that they would be served. A. He said that it was for the appointment of a Receiver. He said he had seen the papers signed to appoint of a Receiver.

Q. And you told that to Mr. Fullerton, and desired him to ascertain whether that was the fact? A. Yes, sir.

Q. And he came back to you and reported that that was the fact? A. Yes, sir.

Q. And thereupon you made the arrangement which you have stated? A. Yes, sir.

By Mr. CURTIS :

Q. Had the safe been broken open then? A. No, sir; this was in the Summer prior to the breaking open of the safe.

WILLIAM A. BEACH recalled. *Cross-examination by Mr. VAN COTT:*

Q. Assuming that Heath & Raphael were by this arrangement set out in the complaint, trustees of an irrevocable trust, or attorneys with an irrevocable power, would not an injunction enjoining them from voting on the stock embraced within that arrangement, have affected the general purposes of the suit as you have stated it? A. I think not.

Q. It would have prevented their voting, would it not? A. Yes, sir.

Q. And could any of the mischief contemplated by the supposed conspiracy have been accomplished so long as the voting power was held in check by an injunction? A. No, sir.

Q. Would not the general purpose of the suit, as you have stated it here, been attained, if an injunction had been granted, restraining the transfer on the books of the Erie Co. of all the stock which bore the stamp of Heath & Raphael in this arrangement? Would it not equally have prevented the voting upon that stock, which was the means by which the mischief was to be done? A. Yes, sir; I think it would have prevented that specific wrong, so long as the injunction continued.

Q. And if there were any merits for an injunction and Receivership, the injunction could have been continued as long as the injunction actually granted and the Receivership actually appointed in this case, could they not? A. I suppose so.

By Mr. CURTIS:

Q. You have been asked whether there was any allegation in the complaint of title to any portion of the 60,000 shares in the plaintiffs, to which you answered that you thought there was not. How did the absence of that allegation, or should the absence of that allegation affect the title of the plaintiffs to bring the suit which they brought and set out in that complaint? Was such an allegation as that necessary in order to maintain the suit? A. I think not; not assuming all the other allegations in the complaint to be true.

By Mr. VAN COTT:

Q. Then I understand you, upon the general theory of the action, to say that any single stockholder in the Erie Company in that conspiracy could have made the same case for the same relief? A. I think so, in connection with the corporation. If I was bringing such an action, I should prefer to join the corporation.

Q. But as to the substance of the action? A. I think so.

By Mr. CURTIS:

Q. The corporation was joined in this case? A. Yes, sir.

CHARLES E. MILLER, sworn ; examined by Mr. CURTIS :

Q. What is your firm ? A. Develin, Miller & Trull.

Q. Do you recollect the suit of *Samuels v. The Evening Post* ? A. Yes, sir.

Q. Did you take any part in the preparation of a brief that was to go to Judge Barnard in that case ? A. Yes, sir ; Mr. Develin drew the brief and handed it to me for correction. I corrected it and copied it in my own handwriting and took charge of submitting it. I had the sole charge of it after that.

Q. How was it submitted to Judge Barnard ? A. It was submitted by me, either by giving it to the opposite attorney or handing it to Judge Barnard. I have the original brief here—the one that was handed to Judge Barnard. [Witness produced original brief.] The memorandum in my register would seem to show that I submitted it myself.

Q. It was not a printed brief ? A. No, sir ; it was at Chambers.

Q. Do you mean to say that this is the copy that passed into Judge Barnard's hands or that that is the original that passed into Judge Barnard's hands ? A. That is the original that passed into Judge Barnard's hands.

Q. Whose signature is that of John E. Develin ? A. That is my writing. The entire brief is in my handwriting.

Q. That name is written by you as for your partner. A. Yes, sir.

Q. Had you written on this brief before it passed out of your hands in pencil, the words : "Delay will not be bad ?" A. Nothing of that kind, or of any kind whatever.

Q. Can you discover any pencil mark on there, so that you can tell what it is ? A. Yes, sir.

Q. What is it ? A. Mr. "George G. Barnard."

Q. Written in pencil ? A. Yes, sir.

Q. By you ? A. By Mr. Develin, as the address to which it was to be delivered. There never has been anything else written on that whatever.

Q. In pencil ? A. In pencil or in ink.

Q. Other than what is on it now ? A. Other than what is on it now.

Q. And no other copy of that brief passed from you ? A. To nobody.

Q. To Judge Barnard either directly or indirectly ? A. Directly or indirectly, no other copy was ever presented to Judge Barnard to my certain knowledge. That is the only copy.

Cross-examined by Mr. PARSONS :

Q. Will you state positively, that on no paper submitted upon that motion to Judge Barnard which came from your office, were written in pencil the words : "Delay will not be bad ?" A.

Neither on that paper nor any other, were those words written, or anything of that kind or anything whatever.

Q. Will you state that positively of your own knowledge? A. Yes, sir; positively of my own knowledge.

Q. Who submitted the papers on that motion to Judge Barnard? A. I did.

Q. Personally? A. Personally.

Q. Why did you say, on your first examination, that you either submitted the papers to Judge Barnard or handed them to the opposite attorney and were by him handed to Judge Barnard? A. The papers on the motion—the brief I am speaking of—was either handed to Judge Barnard by me or by the attorney for the plaintiffs. The affidavits were handed to Judge Barnard by me at the time the motion was made. My partner, Mr. Trull, never had any connection with the case, or anything to do with it whatever.

Adjourned to Monday, March 25th, 1872, at 10 o'clock.

In the matter of charges preferred against Hon. G. G. Barnard, Justice of the Supreme Court. Before the Committee of Assembly.

MARCH 25th, 1872.

FRANCIS W. BANGS, a witness called on behalf of the prosecution, examined by Mr. PARSONS:

Q. How long have you been a practising lawyer in the city of New York? A. Twenty years and upwards.

Q. In the Summer and Autumn of 1868, were you counsel for the Milwaukee & St. Paul Railway Co.? A. I was employed by them at that time as their counsel in a case that was then begun; I had been their counsel from time to time before.

Q. Do you remember a suit brought in the Supreme Court by Aaron S. Bright against that company and other defendants, in the month of August, 1868? A. Yes, sir.

Q. For what was the suit brought, according to the statement of the complaint? A. (Referring to the complaint). According to the statement of the complaint, it was brought for the purpose of adjudging that certain bonds held by the plaintiff were *bona fide* bonds for value, and that the plaintiff and others holding those bonds were entitled to the security of a certain mortgage mentioned in the complaint; and for the further purpose of adjudging that such mortgages were valid liens on the property therein described, and that they were valid liens prior to certain judgments mentioned in the complaint; and for the further purpose of obtaining judgment, applying the rents and receipts of the

property to the payment of the interest due on those bonds, and in case it should not be sufficient, then the judgment asked was that the road and property might be sold, and the usual decree made for that purpose, and the bonds paid. And then the plaintiff asked for an injunction against the Milwaukee road and its Directors from building and purchasing any railroads with the rents to which the plaintiff claimed title, and that they might be restrained from removing from this State any books or papers of the company; and they also prayed for the appointment of a manager and receiver of all the property, equitable interest and effects of the defendant; also asked for an injunction restraining them pursuant to the demands of the complaint.

Q. Was that from doing business, from managing their road? A. That was from building, contracting, purchasing or operating in any way or manner any railroad whatever, wheresoever located, other than the road and property described in said mortgage, with the rents, issues, profits or receipts or avails of the said road and property described in said mortgage; and also an injunction from in any way diverting, misapplying or misappropriating the rents, issues, profits, receipts or avails of said road, from the payment of the liens on said road, etc., as stated in the printed complaint at fol. 59; also an injunction restraining them from removing from this State any books, papers, documents, etc., as stated in the complaint at fol. 60.

Q. Was the Milwaukee & St. Paul Railroad Company a corporation of the State of New York? A. No, sir; not as I understood it, not according to the information which I had got, and I think there was no act incorporating them in this State; they were not formed under any law of this State.

Q. Under the laws of what State was that company chartered? A. Wisconsin.

Q. And where was its railroad? A. In the States of Wisconsin, Iowa and Minnesota.

Q. Do you know whether any order granting an injunction and appointing a Receiver was made, and if so, by what Judge, at the commencement of that suit? A. I know from the papers which I received in the suit.

Q. State then how the fact was? A. There was an injunction issued.

Q. Granted by whom? A. Purporting to have been granted at Special Term by his Honor, Judge Barnard. There was an order appointing a Receiver, and naming him, purporting to be granted by his Honor, Judge Barnard, at Special Term at the beginning of the suit.

Q. Give, if you please, the dates of the order of injunction, and of the order appointing a Receiver? A. Permit me to explain, because it will show the character of my testimony. At the time when these proceedings were commenced I was detained at home. I came to the office on the 27th or 28th of August, and then learned of the proceedings which had previously taken place. I found papers which had been left in the office during my absence, which had been served on some of the defendants, and just after I got there, I received from Mr. Sage papers which had been served upon him.

Q. Who was Mr. Sage? A. Mr. Sage was the Vice-President of the company.

Q. State now, if you please, what was the date of the order of injunction, and the date of the order appointing a Receiver. A. The date of the order of injunction—the caption is, “On (blank) August, 1868,” it granted an injunction and required the defendants to show cause at the Special Term, on the 28th of August, why a permanent injunction should not be granted.

Q. Upon what had the injunction order been granted? A. There is no recital in the papers.

Q. Look at the last clause? A. Oh, yes; it purports to have been granted on the verified complaint.

Q. Was it granted *ex parte*—the *ad interim* injunction? A. I understand so.

Q. Does it not purport to be? A. It purports to be granted—well, this is the way: It don’t recite any application by anybody, and don’t recite any papers excepting in the last line of it. There it says: “This injunction is granted on a verified complaint,” but the summons is dated August 20, 1868, and I never heard that any papers were served before this injunction was got.

Q. So far as you know or have ever heard, the injunction was *ex parte*? A. Entirely so, and that is my belief.

Q. Have you ascertained what security was given upon granting that injunction in any way? A. I requested one of my partners to go to the hall and inquire, and he returned and embodied his information in an affidavit which, I have.

Q. According to that, what was the security given? A. According to that, the security given was a bond of the plaintiff, Aaron S. Bright, in penalty of \$250 without their being attached to said bond any affidavit or qualification or justification of Mr. Bright as surety.

Q. Was the complaint verified in any other way than by the usual verification, verifying by information and belief? A. The copy served upon me by the plaintiff’s attorney is in the usual form of a verification of a complaint, “that he has read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.”

Q. I will ask you whether the injunction followed the prayer for an injunction in the complaint, as stated by you in your testimony? A. I think not, literally.

Q. Does it substantially? A. It corresponds with the prayer of the complaint as to the fifth cause of the complaint, but varies from it a little.

Q. Is it any less broad than the prayer of the complaint? A. No, sir; it is as comprehensive; in other words, it embraces everything that the complaint asks, and upon the comparison which I now make it adds in a trifling particular.

Q. What was the date of the order appointing a Receiver? A. The caption is August 24, 1868.

Q. Upon what papers was the order appointing a Receiver made according to the statement of the order? A. On the summons and the complaint in the action, and an affidavit showing due service of said summons and copy of complaint and affidavits herein—a printed copy; it says, "I never was able to find any affidavits or any papers other than the complaint and affidavit of service.

Q. And that complaint verified in the manner in which you have described? A. Yes, sir.

Q. Who did Judge Barnard appoint Receiver by that order? A. James M. Sweeny.

Q. Who was James M. Sweeny? A. Well, I now know from information I have had since. I knew nothing of James M. Sweeny then, except as Clerk of the Superior Court, and I think I also knew him as brother of Peter B. Sweeny, but otherwise I didn't know him, at least I cannot tell. I know so much about him now, that I cannot distinctly tell what I have learned since, and what I knew then. My present impression is, that all I knew of him then was, as Clerk of the Superior Court, and a brother of Peter B. Sweeny.

Q. Have you since known him as being prominently identified with the so-called frauds, or attempted frauds, upon the city of New York, which developed within last year? A. I would rather answer by saying exactly what I have known about him.

Q. Please to state that. A. I know nothing about his identification with any frauds, except from the newspapers. I have since known him in the capacity of Deputy City Chamberlain. I have known him as Referee in suits of my own.

Q. Appointed by whom? A. I should say in a suit of my own. In that case he was appointed by some Judge of the Superior Court. I have known him as a client; he employed me, and paid me a fee of \$500, in a proceeding before Judge Sutherland. Those are all the relations in which I have known Mr. Sweeny. In saying that he employed me once, I should say that in a representative capacity which he held as Receiver of the Bowne estate, he employed me upon a question before Judge Sutherland, upon a report of a Referee, who had been appointed to pass his accounts. I argued in favor of the allowance which he claimed, and Judge Sutherland sustained the position which I took, and Mr. Sweeny paid me for it. Those are all the relations in which I have personally known Mr. Sweeny.

Q. Who was the counsel for Mr. Aaron S. Bright in that suit? A. Mr. Ira Shafer.

Q. Do you know anything, either of your own knowledge or by common report, of the personal relations which exist, or did at that time exist, between Judge Barnard and Mr. Shafer? A. Of my own knowledge I know nothing of the personal relations between Judge Barnard and Mr. Shafer. I scarcely know how to answer "by common report." I cannot answer what I do know by common report, for I am not in the habit of talking about such subjects.

Q. Have you noticed Mr. Shafer frequently engaged before Judge Barnard when he has been holding Court in cases being tried be-

fore him, or motions being made before him? A. Yes, sir; both before Judge Barnard alone, and before Judge Barnard sitting with other Judges.

Q. Produce now, if you please, a copy of the summons, complaint, injunction, order, and order appointing a Receiver in the suit of Bright against the Milwaukee and St. Paul Railroad Co.? A. I have here the copy complaint served upon me.

Q. Will you produce a printed copy of those papers? A. Yes, sir; I can produce a printed copy of the complaint, injunction order, and order for a Receiver in this printed document which I have. (The documents produced by the witness are marked, "Chargé S. Q. L. B. P.")

Q. What occurred, so far as you know, upon the return of the order to show cause which was made returnable on August 28th, 1868? A. Well, I think it was on that day, or the subsequent day that I came to the office after about eight weeks' absence, and learned that on the 27th my partner, Mr. North, had on account of my necessary absence from the office, got from Judge Barnard an order—an *ex parte* order extending our time.

Q. Extending the return day of that order? A. Well, extending our time for something. Mr. North was expecting to go out of town, and he was troubled about the extension; well, my present recollection is, that he had got the return day extended, as well as the time to appear or answer, there being a question whether we ought to appear voluntarily. Well, I sent for Mr. Carey. I think I can give you a continuous narrative from that point, if you wish?

Q. Please to do so. A. I sent for Mr. Carey, who was the counsel in Milwaukee of the Milwaukee and St. Paul Railway Company, and he came here, and on the 1st of September I went with him before Judge Barnard.

Q. The 1st or the 3d? A. The 1st. Let me have my papers, and I will be accurate about it. On the 1st of September, I went with Mr. Carey before Judge Barnard. He was sitting in the Circuit Court room. Mr. Shafer happened to be present in the Court-room. I had no appointment there with him. I applied to Judge Barnard.

Q. Was Mr. Shafer engaged in any case that was being tried before Judge Barnard, as far as you observed? A. I cannot say, sir; there were other lawyers there.

Q. Proceed? A. I applied to Judge Barnard in Mr. Shafer's hearing. Mr. Shafer said nothing. I got from Judge Barnard this order which I hold in my hand. I considered it *ex parte*, inasmuch as it was not upon notice, and inasmuch as Mr. Shafer said nothing.

Q. What was the order? A. The order was a direction "that all proceedings on the part of James M. Sweeny, Receiver in this cause"—that was as I drew it, and then, by the Judge's direction, I interlined, "except the filing and approval of his bond," "under the order made herein, on the 24th day of August, 1868, be stayed until, and including, the 3d day of September, inst. Dated September 1, 1868. George G. Barnard." The Judge told me, in the course of what

I was saying in reference to this, that he had not yet approved the Receiver's bond, and no papers were submitted to him, except that I said to him that he had been grossly imposed upon, and I stated to him the circumstances of my detention from the office, and necessity of time to take care of it.

Q. What next occurred? A. On the 3d of September, there was left at the office, and came into my hands a paper, which I now produce, being an affidavit of Mr. Shafer's and an order of Judge Cardozo's, dated the 2d of September, requiring the company to show cause on the 3d of September, at 10 o'clock, why Judge Barnard's order of the 27th of August, which was the first order we got, and which is here recited as an order extending the defendants' leave to answer and demur, should not be vacated and discharged. That I received about 10 o'clock.

Q. On the day on which it was returnable? A. Yes, sir.

Q. In the meantime had you taken any proceedings in the Circuit Court of the United States, with a view to relieve the Company from the effect of this injunction and receivership? A. Yes, sir.

Q. State what? A. I had drawn a bill of complaint on the equity side of the United States Circuit Court, and had it verified, and had requested Mr. Carey to go to Cooperstown.

Q. Mr. Carey, the Wisconsin attorney of the Company? A. Yes, sir; to go to Cooperstown and see Judge Nelson.

Q. Judge Nelson, of the Supreme Court of the United States? A. Yes, sir; Judge Samuel Nelson, of the Supreme Court of the United States, whom we both knew to be very familiar with all the matters involved in this litigation, and to apply to him for an order of some kind, which would result in stopping Mr. Sweeny from acting under his appointment as Receiver.

Q. Will you state whether the order appointing Mr. Sweeny Receiver also constituted him manager of the railroad of the Company; what was the provision of the order in that respect? A. (Referring to the order.) At folio 78 of the printed book it says: "James M. Sweeny be, and he is hereby appointed a Manager and Receiver of the railroad and property described in the mortgages or trust deeds referred to in the complaint in this case, and of the liens, &c." Below, at folio 79 it says, "and as the Court may from time to time direct said Receiver to run, operate, manage and control the said road and property described in said mortgages or trust deeds, and to have the direction and superintendence of said railroad and property described in said mortgages and trust deeds, and to carry on the same, and to collect and get in, &c."

Q. Was there any direction in the order that the Company and its Directors deliver over to Mr. Sweeny, as Manager and Receiver, the railroad and other property of the Company? A. There was such a direction at folio 80, in these words, "It is ordered that the defendant, the Milwaukee and St. Paul Railway Company, and the Directors hereinbefore mentioned, do deliver over to the said Manager and Receiver the said railroad and property, so described in said

mortgages or trust deeds, and the stock, goods, effects, books, and accounts belonging to the said Railway Company, so far as the same refer to or have any relation to the said road and property described in said mortgages or trust deeds."

Q. Did Mr. Carey obtain from Judge Nelson any order? A. Mr. Carey brought back an order from Judge Nelson, of which I have a printed copy, dated September 5th, 1868.

Q. Will you state the operative part of it? A. It required the defendants in the suit, which defendants were William Barnes and James M. Sweeny, with a prayer at folio 59, to make Bright a defendant when he should come within the jurisdiction of the Court, it being alleged that he was a resident and citizen of New Jersey—Sweeny and Barnes the actual defendants, and Bright a prospective defendant, the order of Judge Nelson required the defendants to show cause on September 15th, why until the final hearing of the cause, or the further order of the Court, the defendant should not be restrained and enjoined from taking possession of, or in any manner interfering with any of the property or assets of the complainants, under or by virtue of any appointment or pretended appointment heretofore made of the defendant, James M. Sweeny, as Receiver or Manager of such property or assets, or such further order, &c."

Q. Has the Circuit Court of the United States any jurisdiction to grant an *ex parte* order of injunction? A. The Circuit Court of the United States has no power to enjoin proceedings in a State Court, except so far as such power has been given by the Bankrupt Law, as I understand.

Mr. CURTIS :

That is not the question that he asked you.

Q. I ask you whether the Circuit Court of the United States has any power to grant an *ex parte* injunction, except in bankruptcy proceedings? A. No, sir; not as I understand it, under the Judiciary Act. They cannot grant an injunction except upon notice.

By Mr. CURTIS :

Q. Did you state the time at which Judge Nelson's order to show cause was returnable? A. 15th of September, 1868.

Q. What was the next proceeding before Judge Barnard? A. Well, that was under the order which I stated was served upon me, on the 3d of September, 1868.

Q. What was it? A. I attended before Judge Barnard with Mr. Shafer, at the Circuit Court room, where Judge Barnard was sitting, and Mr. Shafer made his motion, and Judge Barnard declined to grant Mr. Shafer's motion. He declined to grant a vacation of the previous order, giving us time.

Q. Did you, on that day, obtain any order from Judge Barnard? A. I did.

Q. What was that order? A. The whole discussion resulted in my

applying for and obtaining an order, which I have in my hand, dated the 3d of September, 1868.

Q. What was the purport of that order? A. Well, I want to see if I can recall what was said about this matter. I don't want to say any thing that will be understood as reflecting upon Judge Barnard, because on that occasion he behaved to me with marked courtesy and consideration for the circumstances under which I was placed, but I did say, and I thought I was forced by Mr. Shafer to say, that if that stay was continued, I would make a motion which I said I wanted to make before Judge Barnard, and that had its influence on the final disposition of the case on that day.

Q. Do you mean before Judge Barnard instead of before any other Judge? A. Well, before Judge Barnard; there was no such thing said as "instead of before any other Judge." I said I was willing to make a motion on the papers to dissolve the injunction and Receivership, and I repeated what I had said before, and what I have said on every occasion that the matter has been up since: that Judge Barnard had been grossly imposed upon. I wanted to make a motion on the papers upon which the injunction was granted, and Mr. Shafer insisted in terms, that if that motion was made, it should be made before Judge Barnard. Well, Judge Barnard declined to vacate the stay which he had given, and in Mr. Shafer's presence I got this order, which I regard as *ex parte*, inasmuch as it was not upon notice.

Q. What was the purport of that order of September 3d? A. It was an order upon the complaint and the injunction order, and order for Receiver, requiring the plaintiff to show cause before one of the Justices of the Supreme Court at a special term, to be held at Chambers, on the 14th of September, why the order of the 24th of August, appointing a Receiver, should not be vacated, and until the further order of the Court to let all further proceedings on the part of said Receiver be stayed—that is, as I wrote the order; by direction of the Judge I interlined after the word Receiver, "except the filing and approval of his bond," and this order, and the proceeding thereon, not to prejudice any motion which the defendants may hereafter be advised to make to vacate said order upon affidavits and other papers to be served by them, and this order to be without prejudice to the injunction now in force. (Signed), George G. Barnard."

Q. When did the motion to vacate the appointment of James M. Sweeny, Receiver, etc., come on to be heard? A. October 6th, 1868.

Q. Who was the Judge then assigned to hold the Chambers Term of the Supreme Court? A. My recollection is, Judge Ingraham.

Q. Before whom was that motion made? A. Judge Barnard.

Q. Please to state the circumstances under which, Judge Ingraham holding Chambers Term, the motion was made before Judge Barnard? A. About Judge Ingraham holding Chambers, I am not positive. Certainly it was another Judge than Judge Barnard; I think it was Judge Ingraham.

Q. What part of the Court was Judge Barnard assigned to hold for October, 1868? A. I could not tell. He sat on the hearing of this

motion in the Circuit Court room. Here is the order of the 3d of September, returnable on the 14th of September. On the 14th of September I attended at Chambers, in the room where Judge Barnard was holding. Judge Barnard was on the Bench, and Mr. Shafer was either there or came there, and I said I was ready to go on with this motion in the case of Bright against the Milwaukee and St. Paul Railway Company. Judge Barnard's answer immediately was, "There is a stay of proceedings out of the United States Court, isn't there?"

Q. Had you informed Judge Barnard of any such stay of proceedings, or of any action in the United States Court? A. No, sir; I had not informed anybody otherwise than by serving the papers.

Q. Did it appear by any papers which had been submitted to Judge Barnard on any occasion when you were present, or when the defendants were represented? A. It did not. I stated, "There is no order out of the United States Court which professes to restrain your Honor from acting." The fact was, that when Judge Nelson was applied to for the order, he said, we must be particularly careful not to enjoin proceedings in the State Court, and this order is only explainable on the ground that the proceedings of the State Court are not proceedings in the Court at all—that they are void. I had that in mind, and I was aware how careful Judge Nelson was about questions of jurisdiction, and I, therefore, said to the Judge, that there was no order from the United States Court that professed to act upon him at all, but that there was an order out of the United States Court, requiring Mr. Sweeny to show cause why he should not be restrained from doing anything under this appointment. Well, I don't know what reasons operated to induce us to sign a consent, which I now have here in my hand, dated the 14th of September. It is in my own handwriting, with the exception of two words which I interlined. It says, "The hearing of the within order adjourned, by consent, to the first Monday of October, at 12 M., Chambers, Part I." The words "Part I," I interlined; they were interlined by Mr. Shafer's request, the stay to continue meanwhile, and until further order (dated) September 14th, 1868. Ira Shafer for plaintiff. I asked Mr. Shafer what he meant by "part one;" I didn't know that there was any part one or part two of Chambers, and he said there in the room, without any pretense of concealment about it, he wanted the motion before—he didn't say before Judge Barnard, he didn't say before his Honor; he said he wanted the motion before Barnard, and I said I didn't believe part one meant anything, and I was going on the adjourned day to the place where the motion was made. I don't know that I said Chambers; I said I was going where the motion was made.

Q. You meaning Chambers? A. I meaning Chambers; yes, sir.

Q. What happened on the adjourned day? A. On the 14th of September, Judge Barnard—

Q. You mean on the 1st Monday of October? A. On the 1st Monday of October, Judge Barnard was sitting in the Circuit Court room.

Q. Part one? A. Well, I can't tell you, sir; it was in the Circuit Court room that fronts on the Park, in the old, square brownstone

building, the Chambers being on the opposite side of the hall. My recollection of what happened in the early part of the day is a little vague. I have a vague impression of having been in at Chambers at all events; I met Mr. Shafer before Judge Barnard.

Q. In that branch of the Supreme Court? A. In the Circuit Court room.

Q. And the Circuit Court room which fronts on the Park? A. Yes, sir; and the business was started by something or other.

Q. State first whether Judge Barnard was sitting there to hold Circuit Court? A. I don't know; there was no jury present.

Q. Were there counsel and parties in attendance as at the Circuit? A. don't think there was a Circuit case on.

Q. Do you mean that the appearances were that Judge Barnard was sitting there specially, with reference to some special business? A. Well, a matter of that kind is, of course, a matter of inference; I can give you my inference if you want it. The fact was that Judge Barnard was sitting there on the Bench, Mr. Shafer was there, I was there, and other lawyers were there; I remember Mr. William C. Barrett was there on a motion to get Judge Barnard to re-hear something.

Q. A motion? A. Yes, sir; I remember what it was; Judge Barnard had decided a motion against Mr. Barrett, and Mr. Barrett thought that the Judge had not quite understood the case, and he was importuning for a re-hearing, but the Chamber business was going on in the other room with the calendar.

Q. Was any Circuit business going on in this room where Judge Barnard sat? A. No, sir.

Q. No calendar being called? A. No, sir.

Q. What took place? A. The business was started some way or other, I don't know how; I know I raised the question that the motion was on the calendar in Chambers, and I insisted that that was the regular place for it to be heard. I said that I had no other motive in insisting on that than to have the rules, the ordinary order of business preserved; not because I wished to select the particular Judge sitting at Chambers, in preference to Judge Barnard, but because it was the order of business.

Q. You said this? A. Yes, sir; and I had other business at Chambers.

Q. Was this case upon the Chamber calendar? A. I remember stating, but I can't now state as matter of fact, whether it was or not. I know my impression was, that it was.

Q. You had not attended to that branch of the business? A. No, sir; but my belief was, at that time, that it was on the calendar, and it is my belief now, and I know I so stated. Mr. Shafer betrayed some feeling when I made the remark that I didn't insist upon this with a view of selecting a Judge. He seemed to regard it as a reflection upon himself, but Judge Barnard was very good-natured about it, and I thought he hesitated very considerably whether he should or should not hear the motion.

Q. Did he determine that he would, or that he would not? A. He

did finally determine that he would, for some reason that he assigned, but I cannot recall what that reason was.

Q. Did you submit? A. Oh, yes, of course. I was the moving party, and I wanted to make the motion, and I wanted the point raised and determined by somebody. My recollection is quite vivid, from the fact that Mr. Jencks, of Brooklyn, and Judge Reynolds, of Brooklyn, came in and sat on the Bench, alongside of Judge Barnard; while the discussion was going on, my motion was made.

Q. The motion to vacate the receivership? A. Yes, sir; it was argued. We stayed there until about three o'clock, I think, altogether.

Q. What was the result? A. Well, the result was the publication in the paper; that is all the result I ever heard of.

Q. Do you mean in the newspaper? A. Yes, sir; in the newspaper.

Q. Do you remember the date, and what that paper was? A. I think it was *The Times*, and by comparison with other papers I am able say, that according to the best of my recollection and judgment, it was after the 6th of November, but I cannot fix the exact date that I saw this. It begins with the title of the case, after the heading "Supreme Court Circuit."

By Mr. CURTIS :

Q. Excuse me one moment. Did you make any search to ascertain whether an opinion corresponding to this had been given? A. Never, sir.

Mr. PARSONS :

It don't purport to be an opinion.

Mr. CURTIS :

Then, is Judge Barnard to be bound by what appears in the newspapers?

The WITNESS :

You may look at it, Mr. Curtis; it modifies his order, (handing paper to Mr. Curtis). I know nothing except I saw this in the paper, "Supreme Court Circuit, Part 1.—Modification of receivership order of the Milwaukee Railway Company's suit, before G. G. Barnard. Aaron S. Bright against the St. Paul and Milwaukee Railway Company *et al.* Judge Barnard, on Thursday morning, handed the following important order to one of his officers, with the express instruction to have the same published in the *Transcript*, and to give notice to the attorneys and counsel on the subject. The order sufficiently explains itself." "On the 24th day of August last, an order was granted by me, at Special Term, appointing a Receiver in the above cause, and a motion has been made by the Company to set aside the order, on that failing, to modify it. I think certain portions of the order must be modified, to wit: That portion giving the direction and superintendence of the railroad and property described in the mortgages and trust deeds to the Receiver;

“also that portion requiring the defendants to deliver over to the Receiver the road ; also that portion authorizing him to manage, control and operate the road ; also that portion requiring the defendants to deliver over to the Receiver the road ; also that portion directing the Receiver to pay the liens on the road, or make payment to the sinking fund, or to fund sufficient to pay principal and interest. In other respects the order is to stand. This will leave the Receiver with the general and ordinary powers of Receivers in like cases, and he will be authorized, and it will be his duty to take possession of the Company’s property, goods and effects, within the State, and to hold the same subject to the further order and direction of the Court. The order to be settled before me on two days’ notice ; the defendants to be at liberty to review the motion before me on such papers as they may desire to serve, within ten days after the settlement and service of this order.

“ F. N. BANGS, for Defendants.

“ IRA SHAFER, for Plaintiff and Receiver.”

Q. In the mean time, what was being done in the suit commenced in the Circuit Court of the United States ? A. The next thing I find is an order without date, signed by Judge Blatchford, “ Let above order—

Q. That is Judge Nelson’s order of September 5th ? A. Judge Nelson’s order, “ Let above order, &c., be heard on 31st day of October, 1868, before me, at 11 o’clock, A. M., at District Court room.

SAMUEL BLATCHFORD.”

Q. Is that written underneath Judge Nelson’s order ? A. Well, it is put in here next to Judge Nelson’s. I have no doubt it was written on Judge Nelson’s order. My recollection is, that on the return day of Judge Nelson’s order, Mr. Shafer and I attended before Judge Blatchford in the morning, and Judge Blatchford was busy, and Mr. Shafer said he would rather have that motion heard before Judge Benedict ; I said I had no objection to its being heard before Judge Benedict. We tried to find when Judge Benedict would be there, and could not ascertain. Then Judge Blatchford named an hour in the afternoon of some succeeding day, when he would hear it ; we attended on that day, and then Judge Blatchford made this order which I have just read. Well, that did not go. There were one or two occasions when we attended there for a long time together.

Q. Mr. Shafer and yourself ? A. Yes, sir ; and Judge Blatchford could not get at it. Then the whole thing fell through until the 10th of November, 1868. I gave notice to the defendants that Judge Nelson’s order to show cause, and the complainants’ motion for an injunction, *pendente-lite*, would be brought on for hearing before Judge Nelson on the 25th of November. On the 25th of November I attended before Judge Nelson, and he was busy hearing the motion which grew out of Judge Davies’ appointment as Receiver of the Erie Rail-

way Co., and was also engaged in the Rosenberg naturalization case, and I asked him if he would hear this while he was in town, and he said no, he could not hear it, he could not make any appointment; and nothing else was ever done.

Q. Were the proceedings in the suit brought by Bright in the State Supreme Court ever pressed after that? A. You observe that there were two orders originally granted, one for the Receiver and one for the injunction, with an order to show cause why the injunction should not be continued. The motion by me before Judge Barnard was to vacate the receivership. It did not apply to the motion to continue the injunction; that therefore spun along on the calendar at Chambers, and got before Judge Cardozo, and one day I understood that Mr. Shafer took my default, and I applied to him to re-open it, and that also has never come on to be heard. I find a consent on the 17th of October, 1868, signed by Mr. Shafer, consenting that the stay of the Receiver's proceedings shall continue until the hearing of a motion now pending in an equity suit in the United States Circuit Court for the Southern District of New York, in which the Milwaukee Company is plaintiff, and Barnes and Sweeny are defendants, and a motion for the continuance of the injunction in this cause be set down for the 21st of October, 1868, at 12 M. Judge Cardozo was holding Chambers then, and when I heard that Mr. Shafer had submitted the papers to him, I applied to Mr. Shafer to revoke it, and let the motion be heard, and he agreed to do it. The papers were re-called from Judge Cardozo, and I have never heard about that since. Mr. Shafer said he had not bargained for those proceedings in the United States Circuit Court; that was more than he bargained for; and that was the end of those.

Q. Practically they upset the Supreme Court suit—the proceedings in the Circuit Court of the United States? A. I can't say that; I have told you all I know, and you are just as competent to infer as I am. We put in answers and demurrers in the Supreme Court suit. No issue has ever been tried, and no answers have ever been put in, in the Circuit Court suit. We could have taken the appeal *pro confesso* long ago, and on the 22d of June, 1871, at the request of Mr. James M. Sweeny, through Andrew J. Smith, I consented to an order vacating the receivership and injunction in this suit, and discharging the Receiver's sureties from their liability on the bond, if there was one. I never received consideration enough or experienced consideration enough to be even served with a copy of the bond, or notice of the justification of the sureties.

Q. The Receiver's bond? A. The Receiver's bond.

Q. Could you ever ascertain that there was a Receiver's bond? A. I suppose I could have ascertained.

Q. I mean did you do so? A. No, sir; I had never heard of any before.

Q. Are both suits still pending, the suit in the Circuit Court of the United States, and also the suit in the Supreme Court of the State of New York? A. I should say yes.

Q. No judgment has been had in either? A. No judgment; no, sir.

Mr. PARSONS:

I now produce from the County Clerk's office the undertaking upon which the injunction in the suit of Bright against the Milwaukee and St. Paul Railway Company was granted. It is an undertaking in \$250, signed by Aaron S. Bright, the plaintiff, representing himself as being of No. 66 Broadway, his place of business in the city of New York; without justification, acknowledged before William H. Tracy, Notary Public, August 20th, 1868, and without sureties; approved by Judge Barnard in his own handwriting, and filed August 24th, 1868; and also the certificate of the County Clerk upon that undertaking, that no Receiver's bond is on file from August, 1868, to January, 1870.

Cross-examined by Mr. CURTIS:

Q. All the judicial acts of Judge Barnard which you have described in this case, were done in the year 1868, were they not? A. Yes, sir.

Q. Will you briefly state what were the grounds upon which the jurisdiction of the Federal Court was invoked? A. On the ground that the Milwaukee and St. Paul Railway Company acquired their right to title under judgment and decrees of the Federal Courts in Wisconsin, and the Supreme Court of the United States, a judicial proceeding in those Courts.

Q. You mean their title to the road? A. Their title to the road and to their property, and that it was a citizen of another State; that the mortgage under which Bright claimed in the suit was a mortgage which had been barred and foreclosed by decrees of Federal Courts, and that the Milwaukee and St. Paul Railway Company, being a citizen of another State, had a right to come into the Federal Court for any cause of action, and particularly for a cause of action which depended upon the validity of the decrees of Federal Courts, and that the proceedings in the Supreme Court of the State of New York were beyond the jurisdiction of that Court, and Mr. Sweeny substantially a trespasser.

By Judge BARNARD:

Q. I understood you to state a moment since that on that particular occasion Judge Barnard treated you with marked courtesy? A. Yes, sir.

Q. On any other occasion did he ever treat you with discourtesy? A. Well, sir, I have rummaged my memory and cannot recollect any occasion on which he treated me with discourtesy, nor I him.

Q. I am aware of that.

RUSSELL SAGE, called on behalf of the prosecution, sworn. Examined by Mr. PARSONS:

Q. Are you the President of the Milwaukee and St. Paul Railroad Company? A. I am the Vice-President.

Q. How long have you been Vice-President? A. I have been Vice-President seven years, and President two years.

Q. Who is the President at the present time? A. Alexander Mitchell.

Q. Are you the chief executive officer in the city of New York? A. Yes, sir.

Q. For what length of time have you been? A. During a period of nine years, since the incorporation.

Q. Do you remember a suit brought by one Aaron S. Bright in the Supreme Court against your Company in the month of August, 1868?

A. Yes, sir.

Q. Were there served upon you the summons, and also an injunction order made by Judge Barnard, and an order appointing James M. Sweeney, Receiver, also made by Judge Barnard in that suit? A. Yes, sir.

Q. Was that the first notification to your Company of the suit? A. No, sir; the first notice I had of it was, I saw it in the *Times*, the morning paper; I think it was two days before the notice was served upon me. I read it coming down town in the morning.

Q. A notice that Judge Barnard had appointed Mr. Sweeney, Receiver, and had granted this injunction? A. Yes, sir.

Q. Under the laws of what State is your company incorporated? A. Wisconsin.

Q. And through which States does its railroad run? A. It runs through Wisconsin, Northern Iowa, and Central Minnesota.

Q. What is its length? A. We had, in 1868, eight hundred and twenty-five miles of road.

By Mr. TILDEN:

Q. The different lines? A. Yes, sir; different lines.

Mr. PARSONS:

Q. Your company did own 825 miles of road? A. Yes, sir, in 1868, and it owns now about 1,200 miles.

Q. At that time was there any extension of your road in process of construction? A. Yes, sir, there was.

Q. How many miles? A. Some 200 miles, which has since become completed.

Q. What, in August, 1868, was the value of the property of which James M. Sweeney was appointed Receiver, under the order of Judge Barnard? A. The value of the property at that time was about \$32,000,000. We did not admit, of course, that he was appointed Receiver of that amount. I believe he claimed to be Receiver of the full amount.

Q. I mean what was the value of the railroad which was mentioned in Judge Barnard's order; was it about \$32,000,000? A. No, sir. I think it was less than that. I think the order was not quite clear as to the full amount; there was a division of the property, what was called the old La-Crosse division.

By Mr. TILDEN :

Q. Was that before its consolidation with the *Prairie-du-Chien*? A. No. We had acquired the *Prairie-du-Chien* division at that time.

Mr. PARSONS :

Q. In what did the property of your railroad at that time consist, how much stock and how much of bonds, or rather, by what was it represented? A. It was represented by about eighteen millions of bonds and fourteen millions of stock.

By Mr. TILDEN :

Q. Common and preferred? A. Yes, sir; common and preferred.

By Mr. PARSONS :

Q. And prior to the notice which you saw published in the *Times* of this injunction and Receivership order, what was the value of the stock and bonds of your road? A. Well, I have not referred back to it, but I have a very clear recollection that the depreciation caused by this proceeding could not have been less than from 5 to 10 per cent.

Q. From what total value? A. On the total value.

Q. On the total value of \$32,000,000? A. Yes, sir.

Q. And where between 5 and 10 per cent., in your judgment, was the percentage of the depreciation of the value? A. In the market?

Q. Was it five, six, seven, eight, nine, or ten per cent., according to your best judgment?

A. I should think it would be about seven and a half per cent; there was a little more depreciation on the stock than on the bonds; perhaps the depreciation might be stated at 5 or 7 per cent., on the bonds, and on the other, 10 per cent.

Q. So that the total injury to your road caused by that proceeding was not less than \$2,000,000? A. Fully that.

Cross-examination by Mr. CURTIS :

Q. Did Sweeney, the Receiver, ever take possession of the road? A. No, sir.

Q. Was that part of the original order appointing him Receiver, which authorized him to take possession, ever executed in any way? A. Well, these gentlemen came down from him and asked possession of the office and books there.

Q. The office was not surrendered to him? A. No, sir; I did not surrender it.

Q. Steps were taken immediately, were they not, to get a modification of the order? A. Well, the papers were passed over to our counsel's hands, and he took the proper measures, I suppose, to protect the property.

Q. Did he not immediately take those steps? A. Well, I delivered the papers to him the same day that I received the injunction order.

Q. Was this the only litigation in which your road was in any way

involved at that time? A. No, sir; I think we had some suits pending before the Supreme Court at Washington.

Q. And did not those suits involve your title to the property? A. Well, yes.

Mr. TILDEN :

You had better state what property it involved

Q. Did not those suits involve your title to the property—the railroad? A. I was trying to recall the date of the decisions of the Courts; I think there were one or two suits then pending, but I am not positive.

Q. Which had come up from the Wisconsin Circuit to the Supreme Court of the United States? A. Yes, sir; from the Wisconsin Circuit.

Q. And were there not also litigations here pending other than this suit of Bright, about that time, and was there not a suit of one Francis Vose, in which I was counsel for the plaintiff? A. There was one, but I am not sure that that was then running or not; the suits have all been decided in favor of the Company since, including yours, sir.

Q. Were there not in all those suits allegations on the part of the plaintiffs—were there not charges and counter-charges of fraud? A. Yes, sir; this case of Bright's that I am speaking of, the Court had decided that the mortgage under which he claimed was a fraud and void.

By Mr. PARSONS :

Q. Had previously so decided? A. Yes, sir; this suit was regarded as a blackmailing suit.

By Mr. CURTIS :

Q. I speak now of the other suits, those pending in the Supreme Court of the United States, and suits other than this of Bright's; were there not allegations on the one side and the other, charges and counter-charges of fraud involved in those cases? A. No, sir; this suit of Mr. Vose's, of which you were counsel, was a suit claiming an exception from other bondholders in the old La-Crosse road, which was foreclosed, and he was unwilling to accept the compromise which had been entered into between the bondholders, which had been acceded to by the entire bondholders of the old company; he still has his five bonds, and still refuses to accede to the decision of the Supreme Court.

By Mr. TILDEN :

Q. How many bonds? A. Five bonds out of eight million.

By Mr. CURTIS :

Q. I do not care what the merits or demerits of that suit were; I only want to know whether there were or were not, in those various litigations, charges of fraud on both sides? A. Do you speak of the suits other than the Bright suit?

Q. Yes, sir. A. I do not know of any suit that is pending except the Bright suit affecting the title of property.

Q. In that suit pending in the Supreme Court of the United States, was not the title of the company which you represent called in question? A. Which suit do you refer to?

Q. The one pending in the Supreme Court of the United States at this time.

Mr. TILDEN:

At *that* time.

Q. At this period, in 1868, while this Bright suit was running? A. I cannot state positively, because it is some time since, and I have not had my attention called to it, and I am not prepared to answer intelligibly.

Q. You do not know? A. I do not know.

Q. Do you know whether Sweeney's appointment and legal rights, if he had any legal rights as Receiver, were ever perfected in the State Court here; whether he ever filed a bond and perfected his right, whatever it might be? A. I was so informed that he had, and I will state further now, that I did not think there was any suit pending, and I will give my reasons for it.

Q. Any other suit pending? A. No, sir; in the United States Court, for the reason that our counsel took measures to call upon Judge Nelson, who had decided this case previously.

Q. What case? A. The case that you inquired about pending in the Supreme Court of the United States.

Q. Judge Nelson? A. Judge Nelson had decided this case—which case I could not recollect a moment ago—previous to this time, and had given an elaborate opinion, and it was some order or notice which our counsel got from Judge Nelson that, as we supposed, caused Mr. Sweeney to desist from enforcing his right to possession of the office and effects of the company.

Q. He did not enforce it, did he? A. No, sir.

Q. Did not attempt to, did he? Q. Yes, he demanded it.

Q. Other than when he came to you with the original formal demand for the possession of the office; after that he made no attempt to enforce his right, did he? A. No, sir; he did not make any after that, because he was told we should not surrender the possession of the office; we were acting under a higher Court than Judge Barnard's—acting, as we supposed, under the decision of the Supreme Court of the United States.

Q. What jurisdiction had the Supreme Court of the United States then in the case? A. The Supreme Court of the United States had decided this very case, you know.

Q. This very case of Bright's? A. Yes, sir; had pronounced the mortgage under which Mr. Bright claimed here as a fraud on the creditors.

Q. In *another* case? A. I supposed it was all embraced in one; there were sixteen cases decided by the Supreme Court at one term?

Q. You do not mean that Bright's case ever went to the Supreme Court of the United States? A. I mean the case under which these proceedings were founded had been decided by the Supreme Court of the United States.

Q. What you mean is this, is it not: that in another case the Supreme Court had decided that the mortgage which Bright depended upon was void; is not that it? A. I say what the case of Bright was founded upon was, the pretended claim of the Milwaukee and Minnesota Railroad Company. I will state right here, in this connection, that the claim upon which this injunction was granted by Mr. Bright was a pretence on his part that he owned a \$500 bond in this company, which the Supreme Court of the United States had declared void and a fraud, and I have never seen any evidence that he owned any \$500 bond; they sell currently on the street for five cents on a dollar. A batch of them got into the Market Savings Bank, I believe, a part of the assets.

Q. That is the Milwaukee and Missouri? A. The Milwaukee and Minnesota.

By Mr. TILDEN:

Q. The Milwaukee and Minnesota Company was a company organized under a claim of title to that portion of your Northern Division that was between Milwaukee and Portage? A. Yes, sir.

Q. About 106 miles? A. 105 miles.

Q. Whatever controversy there was in regard to your road related to that 105 miles out of the 800 or 1,200, as the case might be, of your property. A. Yes, sir.

By Mr. PARSONS:

Q. Did the modification which you understood subsequently to have been made of the order appointing a Receiver, or did the action of Sweeney in not pressing proceedings to take possession, repair the wrong and injury which had been done to your road and to its property by the order originally made by Judge Barnard? A. Certainly not; it never has been repaired. I do not know that there ever was any modification of the order. It was published forth and blazed around by Mr. Bright and his friends that Mr. Sweeney was to come down every day, and take possession of the office and safe and books and papers of the company. The only reason that we assigned for his not doing it was the notice which our counsel got from Judge Nelson at Cooperstown, and served upon him, that caused him to desist from attempting to take forcible possession of the office.

Q. Was it possible for any subsequent action of the Court to repair this wrong and injury done to your company? A. Well, it never has. I believe that we have suffered from the effects of that injunction down to the present day.

FRANCIS N. BANGS recalled. Examined by Mr. PARSONS:

Q. Do you wish to make some correction of your testimony? A. It

occurred to me that I had made two mistakes in my testimony. I stated that the first I had heard of this case was when I had returned to my office, after some two months' absence. It is a mistake. While I was still detained at home, and about the 24th of August, I saw this entire order appointing a Receiver published in a newspaper—I think, *The World*. That was the first I heard of it. I heard nothing more of it, and I was not in a condition to consider the subject until some four or five days after, when I returned to business. Then, the other matter—that I think I did not state exactly as it happened was about the order vacating the Receivership. Mr. Andrew J. Smith, on behalf of Mr. Sweeney, called upon me personally and asked me to consent to an order relieving Mr. Sweeney and his sureties on their obligation, which I refused to consent to until he obtained and brought me a consent vacating the order appointing a Receiver and the injunction. I was afraid I had left the impression that he volunteered that, or that somebody volunteered it; the fact was I exacted it, and my register shows in an entry of my own, though I have no distinct recollection of the fact, that he then brought me, in a compliance with my demand, a consent to vacate the order appointing a Receiver and granting an injunction, and that thereupon I consented to relieve the Receiver and his sureties. That is all I wish to say; perhaps I have said it before, but I thought that I did not.

Q. You did not state previously that the first notice you had of the suit was the publication in *The World*? A. That is so.

JOSIAH H. SUTHERLAND appeared before the Committee, and said: "Gentlemen, I apologize for troubling you; this is a voluntary statement on my part—"

MR. PARSONS:

Won't you be sworn, and make your statement under oath?

Judge SUTHERLAND having been sworn, testified as follows:

I read the *Tribune* and *Herald* both yesterday; both contained what purported to be the substance of Mr. Strahan's evidence (J. H. Strahan, counsel to Mr. Greene), of the manner of efforts on his part, as the counsel for Mr. Foley in the suit against Connolly and others, which initiated, or is talked of as initiating, this reform movement. The account stated my name and Judge Ingraham's, and I believe also Judge Barrett's. I am not going to say anything which can be construed as meaning or implying that Mr. Strahan swore falsely. I do not know what he swore to: I have no means of knowing; I have asked the privilege to now state the facts so far as my own name is concerned, and I start by saying that the material part of that account is utterly false, utterly; and it has hurt my feelings extremely, because I cannot help but feel hurt. In the first place, I do not believe Mr. Strahan swore to that exactly as it appeared in that statement, but it appeared to be maliciously and wilfully perverted. In the first place, the substance of the account is, that application was made by him as the counsel for Mr. Foley, and perhaps other counsel with him, to me, while I was sitting in Chambers, for an injunction. I do not know that the

Committee know of our assignments here, but I was assigned as Judge of the Supreme Court to hold Chambers for the month of August, as appears on the programme which we have printed, and which every lawyer knows about; my time expired on the last Saturday preceding the first Monday of September. On the Thursday of the last week I was quite unwell, and I happened to see Judge Cardozo, and asked him if he would hold for me on Friday; we did not hold on Saturdays, but adjourned until Monday, in the hot weather in Summer; I told him that I told my wife I would go with her to Hudson, as I was quite unwell, if he would hold for me on Friday. He said he would. I left in the morning train for Hudson with my wife, and remained there until Monday morning, when I took the 5 o'clock train from Hudson, which is a special train running from Hudson, and arrived in New York pretty late, about 11 o'clock. My term in Chambers had then expired. There is no need of my saying that I remained at home until the 11th of September. On Monday night was the great meeting at the Cooper Institute, the Reform meeting; that is my recollection that it was Monday night; on Tuesday I received a note from John Foley, through a boy, saying he would call in the evening and see me. I told the boy to tell him I would be at home, and would be glad to see him, or would see him, something to that effect, about 7 o'clock. I do not know that I knew Mr. Strahan's name then, but this gentleman whom I was introduced to as Mr. Strahan and the two Barrett's, William C. and George, and Mr. Foley, came to my house; this was on Tuesday evening; they said they had been to Chambers that day for this injunction, stating the cause; it was the injunction in the Foley suit, and that Judge Barnard was sick, and there had been no Judge at Chambers. I made the remark: "Gentlemen, there must be somebody to hold Chambers; if Judge Barnard is sick, either I or Judge Ingraham will hold Chambers;" they said, "What are we to do; we want to make an application for this injunction." I understood they had the papers with them.

By Mr. PARSONS:

Q. Will you please to state this, whether that was the first notice you had of any such desire? A. No application for any injunction up to that time had been made to me, none whatever while I was at Chambers. I said, "Gentlemen, a great deal of trouble has come out of granting orders where the Judge is not at Chambers; you know what our regulation is, and in addition to that, perhaps, you do not know that when Judge Brady was elected and first came on the Bench, he said, he thought there was trouble in going out and running about to Judges not at Chambers, to get orders of injunction, and he drew up a written agreement, which he wanted the Judges to sign, that application in all those cases must be communicated to the Judge holding Chambers, and that we should agree to abide by that rule. I was then on the Court of Appeals, and when I returned all I know is, that Judge Cardozo sent up that agreement or contract to my house, and I signed it, and I believe that Judge Barnard signed it. I said, "Gentlemen, I have never deviated from that rule, and I do not wish

to." William C. Barrett says, "I don't want an injunction granted here, I would not take it here, I want to apply regularly." Says I, "That is the best way, no matter who the Judge is at Chambers; the regulation is to apply there, and that is the best way." Now, says I, "Gentlemen, Chambers must be held; I will be down to-morrow morning punctually, and will be in the private room of the Judges, and if you get from Judge Barnard an intimation that he wants me to take his place and hold Chambers, will go in and hold it, and you can make your application to me, and if your papers make out a case, I say to you, you shall have your injunction."

Q. Was Judge Barnard regularly assigned to hold Chambers? A. He was down on Monday and opened it, and my term had expired, I believe. I said at the same time that Judge Ingraham would do the same thing, but I did not know that he was in the city. Mr. Foley, I think, said, "Judge, this is a little embarrassing for you; your term is about expiring, and we do not want to injure you." That is the substance of it; the idea was, "It may embarrass you, because you may be a candidate again." Says I, "Mr. Foley, I beg you not to say anything of that kind; if you make out a case, and you make the application to me regularly, I shall consider it, and you shall get your order." And they left. Next morning I went down, as I told them I would, and I do not recollect whether Judge Barnard was on the Bench when I got there, or whether I saw him, but either when I went into the private room I looked into the Chambers and saw Judge Barnard there, or else coming out afterwards shortly, I looked in and saw him there. I afterwards heard that they made the application to Judge Barnard and got the order; and I remained in town until, I believe, the 11th of September, and went up into the State of Maine. Of course, I do not know what Mr. Strahan swore to, but I do assure the Committee that I cannot conceive of a more painful editorial than that in the *Times*, to charge me—to point to me as an illustration of the fruits of an elective judiciary, a man of my age who, believe, has never been known to shirk a duty when it was once put upon him, and I do not know that I ought to come here. I must confess that I was very much embarrassed and urged it, and now I want to say that I happened to see William C. Barrett, who said this account was a perfect outrage, and he was quite willing and would like to come here, and I believe he would tell the same story. I think I can say the same of George Barrett; at all events there is not a human being that would dare to swear that the application was made to me for that injunction as the Judge holding Chambers. No application was ever made to me while I was holding Chambers; my time had expired. This article went on to say that I appeared amazed, and excused the performance of my duty; when I got Mr. Foley's note, I had seen from the press that there was a suit coming up, and I could not help thinking whether he was going to make this application; I said to the boy, "Tell Mr. Foley to come up, and I will be at home," and I was there. It is for the Committee to say whether it was an application to be at my house. The papers, I think, were not taken out of Judge

Barrett's pocket; they were not unfolded; I never read a sentence nor a line; they were never presented to me, and there was nothing there preparatory to my signing it.

By Mr. VAN COTT:

Q. I want to ask you in that connection whether in any of these interviews of which you have spoken, you have referred the parties to Judge Ingraham to make the order? A. No, sir; I said, "Either Judge Ingraham or I, if Judge Barnard is sick, will take his place;" but, said I, "It is a delicate thing for either of us to go there and intrude ourselves into the chair, but if you will get an intimation from Judge Barnard that he is willing I should take his place, I will see that there is a Judge at Chambers, for I will be down there in the morning and look at your papers and examine them, and if you have got a case, you shall have your injunction."

Q. Then you made no effort to shift anything from yourself to some other Judge? A. No, sir; I have told you everything.

Q. I asked you the question to give you the opportunity to say it? A. No; I do not want to take away from Judge Barnard the credit of granting that order; I do not appear here in any manner against him; the want of moral courage in a public officer who has certain duties to perform is a serious charge—a want of moral courage; why, it is a thing for which I could never forgive myself.

Mr. CURTIS:

Judge Sutherland, I wish you to understand that there has been on the part of Judge Barnard and his counsel, no effort or desire to claim credit for him at the expense of his brethren, and I do not understand that any testimony given here by Mr. Strahan has been correctly reported in the newspapers, so far as I have seen; it has been the experience constantly here every day, that in some way or other, these newspaper reporters pick up what they are pleased to represent to the public as accounts of testimony given here, which are entirely untrue.

The WITNESS:

All I know of Mr. Strahan's standing is in favor of his character, as a man of the purest character, and I have the greatest respect for him; I have the greatest respect for Mr. Strahan, and I could not believe it possible that he would come here and state the application made to the Judge—that he had not done his duty at Chambers; no Judge ought to shirk his duty.

Mr. CURTIS:

There is no such testimony.

Mr. PARSONS:

Mr. Strahan made the statement that Judge Sutherland preferred the chances of a nomination to taking the responsibility of granting that order.

(The stenographer read a portion of Mr. Strahan's evidence.)

By Mr. PARSONS :

Q. Have you heard the stenographer read from the minutes the testimony of Mr. Strahan, to the effect that at his request, or at the request of Mr. Barrett and himself, you went to Judge Ingraham's with a view of his granting the injunction order, and reported from Judge Ingraham to the effect that he proposed to devote the remainder of his term to the punishment of offenders, &c., and if so, is that statement correct? A. I have heard it read; there is not a word of truth in it; I think there is a misunderstanding.

(The statement of Mr. Strahan of his calling with Mr. Barrett upon Judge Sutherland, of his efforts to find Judge Ingraham, being read to the witness, he then explains.)

Ordinarily, I should express some doubt what Judge it was that I spoke to, to take my place and hold Court; it was Judge Cardozo; on Thursday before the adjournment, I asked Judge Cardozo, who was staying at Long Branch, if he would come up and hold Court for me; he said he would; I went home quite unwell; I went to bed, and my wife says I got to sleep, and I recollect now, but I did not recollect it before, that she said that after I got to sleep some gentlemen came there and wanted to see me, and I believe she mentioned William C. Barrett's name, and she told them she could not wake me, for I was quite unwell, and had been very hard to work, and was perfectly exhausted; in the morning, as soon as I got breakfast, or immediately after breakfast, I sent for a carriage and went to the Hudson River Depot, and went to Hudson and stayed until Monday morning, and returned; up to that time I never had seen Mr. Strahan on this subject, until my return Monday morning, nor Mr. George Barrett, neither of them; I might have known Mr. Strahan very well—I might have known him if I had seen him, but I had no intercourse with him before then; there never had been any application to me for an injunction at all; I returned Monday, and on Tuesday in the evening these gentlemen, Mr. Foley and William C. Barrett and the present Judge, George C. Barrett, and Mr. Strahan came up, and then took place what I have said, and the next morning, as I had promised them that I would be down there and take Judge Barnard's place, if he wanted me to, and hold Chambers for him, I went down and I saw Judge Barnard, and I understood afterwards that they applied to him and got the injunction; I was not holding Special Term; my term had expired on the Saturday previous; Judge Barnard commenced Monday morning, and I was not at Chambers; I never saw Judge Ingraham on the subject; I never made any arrangement with him, and never went to see him, and never went up to his house; Judge Ingraham lived at Harlem. I had no conversation with Judge Ingraham, directly or indirectly, that I recollect of; we may have talked about the Foley suit generally, of what we saw in the papers possibly, but I have no recollection at all; I never saw Mr. Strahan but once that I have any recollection of, which was on that Tuesday, I cannot be mistaken, the day before they got the injunction; then he came in company with George C. Barrett, William C. and Mr. Foley, and I undertake to say that those

gentlemen, Judge Barrett, William C. and Foley, in every particular will confirm what I say, so far as they were present there and had knowledge of that part of it; as to Judge Ingraham, I made no arrangement with him, and did not go to see him; I think, myself, there must be a mistake about the minutes; I think it refers to somebody else that went out to Judge Ingraham's; I never went out there.

Q. It is not stated that you went out there; they went out there on failing to obtain an injunction from you? A. I repeat again, that when at my house on Tuesday, William C. Barrett said, and I think he will swear to the same thing before the Committee, that he expressly told me that he did not want the injunction there, and would not take an injunction at any Judge's house; he wanted it regularly at Chambers, and I concluded that the object of his visit there was to secure the attendance of a Judge at Chambers, that they could make the application, and I did what I could to bring it about by going down there, and I suppose they applied the next morning to Judge Barnard. There was no occasion to come after me; he was there well enough to hold Chambers, and did; that is the last thing that was said to me about the case. I do not think I am mistaken about dates. I certainly could not be mistaken about the Cooper Institute meeting on Monday; ordinarily my memory is not good enough to swear positively to dates. I would say to the Committee that Judge William C. Barrett told me this morning—I happened to see him coming down to my office—he told me—spoke of this account that I saw in the papers, and thought it was extremely unjust and very unfair to me, and said he would be very happy to come up here and tell all he knew about it if the Committee would hear him, and I know Judge George C. Barrett would. What embarrasses me is that I take up your time to protect myself.

Mr. TILDEN:

The Committee will do whatever is necessary to do you justice.

The WITNESS:

I think there must be some mistake about Mr. Strahan; it is certainly a mistake of memory; he never intended to testify wrong there. I cannot believe that.

WILLIAM D. VAN VLECK, called on behalf of the prosecution, sworn and examined by Mr. STICKNEY.

Q. What is your occupation? A. Book-keeper in the National Shoe and Leather Bank.

Q. How long have you been so? A. I have been book-keeper since April—the last part of April.

Q. How long have you been in the bank? A. I came there the 10th of August, 1869.

Q. Has the Hon. George G. Barnard a deposit account in that bank? A. Yes, sir.

Q. For how long has he had one? A. I could not tell you; I don't know how far back it is.

Q. As far back as July, 1869? A. I could not tell how far back it is.

Q. What is the earliest entry that you remember looking at—the earliest deposit entry? A. The earliest date I recollect positively is when I first took the ledger; that is a year ago.

Q. Did you examine to-day in the books of the bank the entry of a deposit made by Judge Barnard in July, 1871? A. Yes, sir.

Q. Will you state what that deposit is? A. It was deposited as a check of \$3,000, cash item, and collected through the Clearing House.

Q. Check on what bank? A. Tenth National Bank.

Q. On what date was that deposit made by Judge Barnard? A. 14th of July, 1871.

Q. And your books show that that check was collected through the Clearing House? A. The books do not show it; no, sir; but that is the way the check was collected.

Q. Could it have been collected in any other way, or would it have been in the ordinary course of your business? A. It would not have been in the ordinary course of business; no, sir.

Q. And it would have gone to the Clearing House on what day in the ordinary course of business? A. On the morning of the 15th.

Q. The 15th of July? A. The 15th of July.

Cross-examined by Mr. CURTIS:

Q. Do the books show in any way who the drawer of the check was? A. No, sir.

Q. And there is no mode of ascertaining that now in the bank, is there? A. No, sir.

Q. Are the tickets kept—the deposit tickets? A. The deposit tickets are kept, but there was no ticket for this one, I believe.

Q. Don't Judge Barnard habitually make deposits without putting any ticket in with it? A. How is that.

Q. You said there was no ticket with this deposit when this check was deposited? A. There was no ticket that I have seen anywhere.

Q. No ticket that you have seen? A. No, sir.

Q. Have you looked for one? A. No, sir; that is on the note-book, and where it is on the note-book there is no ticket; that is a sign generally.

Q. Do you know anything about Judge Barnard's practice in making deposits, in regard to making or not making a ticket with the deposit? A. No, sir; I don't know.

Q. You are simply bookkeeper? A. I am simply bookkeeper; yes, sir.

Q. You have the custody of the books during business hours? A. Yes, sir.

Q. You find there this entry on the 14th of July, of a credit of \$3,000 to Judge Barnard's account? A. Yes, sir.

Q. And you say that that was through a check deposit? A. Through a check deposit; yes, sir.

Q. Do the books show that it was through a check? A. The books show that there was a check deposit—yes, sir.

Q. Do the books call it a check deposit? A. Yes, sir; the book shows a check.

Q. A check drawn on the Tenth National Bank? A. Yes, sir.

Q. Does that appear by the book? A. Yes, sir; it appears by the book.

Re-direct by Mr. Stickney:

Q. Just explain to the Committee what this note-book is. A. The note-book is a book in which notes or deposits made without tickets, or anything like that appear, or in which the credits are made to the different accounts in the bank.

Q. And if the deposit had been made with a deposit ticket, would it appear there on the note-book? A. No, sir.

Q. But it does appear there? A. Yes, sir.

By Judge BARNARD:

Q. Do you know whether Judge Barnard has been in the habit, ever since you have been at the bank, of drawing checks on that bank three or four days ahead when he had no money in it? A. No, sir; I can't say that I have.

WALTER S. CHURCH, called on behalf of the defendant, sworn, and examined by Mr. CURTIS:

Q. Colonel Church, where do reside? A. I reside in the city of Alban .

Q. In the Summer of 1869 were you connected with the Albany and Susquehanna Railroad in any way? A. I was, sir, one of a number of gentlemen who endeavored to make an organization for the purpose of managing that road.

Q. At that time what interest had you in the road? A. Originally my interest was excited from being the proprietor of a very large amount of lease-hold estates through which the road ran, which brought me, with the little interest I had to bear, to encourage the original construction of the road, and subsequently its good management and welfare, for the benefit of that community and myself as connected with it.

Q. Were you a stockholder? A. I became a stockholder that Summer.

Q. What caused the effort of yourself and other gentlemen connected with the road, or interested in the road, to make an effort to change the management in the Summer of 1869—what led to that effort? A. It was the positive evidence which we had of the dishonesty of a man who was at the head of the management, the bad faith in conducting the business of the road.

Q. You mean Mr. Ramsey? A. Yes, sir.

Q. Will you state whether you and other gentlemen in that country applied to Mr. Jay Gould in this city, for financial aid in the purchase of stock of the company in the market, with a view of securing

a sufficient number of votes to elect such a Board of Directors as you desired to choose? A. I was not one of the parties to make the application, but gentlemen who were associated with me applied to Jay Gould for money under these circumstances: We felt confident, upon a full examination of the amount of shares which we held, and upon the declarations of the Commissioners of the different towns, who had votes in the company, that we had a majority of the stock to be voted upon, we felt very certain that we should succeed, and so felt until a crisis arrived, when it was discovered that Mr. Ramsey had gone into the market and purchased the stock of one or two of the towns which we expected to have the votes on. When that crisis arrived, as I understood from my associate, Mr. Wilbur, one of the parties who was acting with us, applied to Mr. Jay Gould for money to purchase the stock of other towns, to counterbalance the power which Mr. Ramsey's purchase gave him.

Q. Did this movement originate with Mr. Gould and Mr. Fisk, or anybody in the interests of the Erie Railroad for the purpose, aside from the wishes and interests of gentlemen connected with the Albany and Susquehanna Railroad, to get the control of the road for their benefit? A. I never understood that it did; I never heard Mr. Gould and Fisk's name mentioned in connection with the enterprise until after Mr. Ramsey purchased some of the stock of a portion of the towns which we expected to have voted for us, and that was very near the time of the closing of the books, and after we had supposed that we had sufficient power to elect our Board.

Q. You yourself did not come to the city with the other gentlemen, to see Mr. Gould on the subject? A. No, sir.

Q. You were not present? A. I was not.

Q. Did you see them on their return? A. Yes, sir.

Q. Then on their return what measures were taken by you and your associates, to carry out the plan that you had formed of changing the management of the road? A. After their return we proceeded to purchase—or they did. I did not take an active part in it; they proceeded to purchase the stock of these different towns, making the best contracts they could for it.

Q. They procured contracts for a considerable number of the towns holding the stock to sell it at par, or how? Was it to be sold at par? A. The statute provided, I think, that the Commissioner, without consultation or additional power, had the right to sell at par. Their negotiations were only for the purchase of it at par.

Q. When your arrangements in regard to the purchase of the stock, or the arrangements of your associates in regard to the purchase of the stock, were completed, and the election approached, were various litigations commenced on the one side and the other? A. Yes, sir; I understood so.

Q. Had you personally anything to do with those litigations—any of them? A. No, sir; I had not. At that time an agent of mine was murdered in the execution of process, who was a Deputy Sheriff in Rensselaer county, and it was just at that crisis that he was murdered and

several others very badly wounded, and that withdrew me very much from the active efforts that my coadjutors were making.

Q. Were you present at the election in Albany—the election of Directors? A. I was.

Q. If I recollect rightly, those with whom you acted were called, in this controversy, the Church party? Yes, sir.

Q. And those that were on the opposing side were called the Ramsey party? A. Yes, sir.

Q. Now, I wish to ask you whether on your side, and acting with you, there were not present these persons: Mr. Leonard, was he present? A. Yes, sir.

Q. Mr. Chase? A. Yes, sir.

Q. Mr. Wilbur? A. Yes, sir.

Q. Mr. Charles Courter? A. Yes, sir.

Q. Mr. North? A. Yes, sir.

Q. Mr. Evarts? A. Yes, sir.

Q. Mr. Fisk? A. Yes, sir.

Q. Mr. Church? A. Yes, sir.

Q. Stanton Courter? A. Yes, sir.

Q. Mr. Harris? A. Yes, sir.

Q. Mr. Bush? A. Yes, sir.

Q. Mr. Oliver? A. Yes, sir.

Q. Did those gentlemen, all of them, hold their certificates of stock in their own right, or proxies? A. I think they did; I was so informed.

Q. Who were present as counsel on your side—David Dudley Field? A. Messrs. Field & Shearman, and Judge Parker and Mr. Harris.

Q. Mr. Redfield? A. Yes, sir; Mr. Redfield.

Q. Was he there? A. Yes, sir.

Q. Now, of the Ramsey party, were not the following gentlemen present: Mr. Ramsey? A. Yes, sir.

Q. Mr. Hendrick? A. Yes, sir.

Q. Mr. Rice? A. Yes, sir.

Q. Mr. Perry? A. Yes, sir.

Q. Mr. Dawson? A. Yes, sir.

Q. Mr. Blackall? A. Yes, sir.

Q. Mr. McCormick? A. I don't recollect him.

Q. Mr. Clark? A. Yes, sir.

Q. Mr. Hardie? A. Yes, sir.

Q. Mr. Westhover? A. Yes, sir.

Q. The counsel on that side, William F. Allen; was he there? A. Yes, sir.

Q. Judge Porter? A. Yes, sir.

Q. Mr. Vanderpoel, of this city? A. Yes, sir.

Q. Mr. Charles Tracy, of this city? A. Yes, sir.

Q. Mr. Hand, of Albany? A. Yes, sir.

Q. Mr. Smith, of Albany? Yes, sir.

Q. Mr. Peckham, Jr., of Albany? A. Yes, sir.

Q. Mr. Hale? A. I don't recollect this moment whether I saw Mr. Hale down there or not.

Q. Mr. McFarland? A. Yes, sir.

Q. Mr. Moak? A. I am not clear that I saw Mr. Moak.

Q. Did you see Mr. Swartz? A. Yes, sir.

Q. Mr. Smith, whom you speak of, and who you say was there, is the present speaker? A. Yes, sir.

Q. Was Mr. Fuller there, the Receiver of a certain portion of the stock? A. Yes, sir.

Q. W. J. A. Fuller? A. He was.

Q. You have named as being present on your side sixteen persons, and twenty-two persons you have named as being on the opposite side, or on the Ramsey side, all gentlemen known to you, were they? A. Yes, sir; all those I have named were known to me.

Q. Now, the persons whose names you did not know or recognize, can you tell me how many persons were there as holding proxies for the purpose of voting, or of voting at the preliminary proceedings of the stockholders' meeting, who are not included in those that have been named on your side? A. There were, I should think—I did not count them, but I should think there were from twenty-five to thirty, and there might have been more than that in one end of the room, the back part of the room, or rather the portion of the room fronting on Broadway, whom I understood to be in favor of our ticket.

Q. You think that there were about twenty persons? A. I should think from twenty to thirty, and there may have been a few more.

By Judge BARNARD:

Q. Which is Broadway? Does it run right in front of the Delevan House? A. Yes, sir.

Q. Past Erastus Corning's store? A. Yes, sir.

By Mr. CURTIS:

Q. On the other side—on the Ramsey side—were there any persons besides those whom you have now named, and how many, in your judgment, present there in that end, in their end of the room? A. In the other portion of the room—I stood facing the door which entered the room leading to the room where the votes were taken, and that left just about the space from here to the wall on my right hand. The other portion of the room, which was a considerably larger portion, perhaps a third larger, not quite as large as that entire room (referring to the room in which the evidence is being taken,) but nearly so, was filled with the other party, apparently, and the vestibule outside was also packed and a smaller room adjoining.

Q. Now, aside from the persons whose names and persons you recognized, what was the appearance and apparent character of the crowd of persons who seemed to be in that portion of the premises that you have described? A. In the portion opposed to our side?

Q. Yes, sir. A. Well, I knew a good many of them. The leading man, most conspicuous, was a very low-lived scoundrel by the name of Thomas Mulhall, who was distinguished in our community as one of the very worst men we have got in it. That fortunately got him out of his position in the Common Council.

Q. Will you describe the appearance, and so far as you recognized any of them, state what other persons there were there among this crowd? A. There was a large number of rough characters of our city there, and I should think amounting in numbers to—the crowd varying from eighty to a hundred or more men.

Q. Of men whose names you did not know or recognize, do you mean? A. A portion of them I knew, but the most of them I did not know personally, and quite a large portion of them I recognized as being rough characters. I knew them by sight, and had had, I should think, of the crowd, as many as five and twenty or thirty of them in my employ.

Q. At different times? A. At different times. It became necessary frequently for us; I was managing a large landed estate in Albany. I have been compelled to enforce processes by the assistance of *posses* in Albany county very frequently, and the only parties whom we can get, of course, to perform such services are these rough characters. We employ them in that way, and that made me familiar with a goodly number of them, who would come up and speak to me and address me, but whose names I had no knowledge of, and I should think that of those roughs there were as many probably as five and twenty by whom I was addressed in that way, and who I knew to be of that character. They finally got up a great commotion there, so that the police had to interfere.

Q. Will you describe what took place? A. They, led by this Tom Mulhall, got up a rush apparently for this door which led into the room where the polling was had, and in their attempts the Chief of Police and his assistants came out and had a hand-to-hand struggle with them, and quite a fierce one.

Q. Let me ask you here, in this connection, if you know at whose instance the Chief of Police was there in attendance? A. At the instance of the Receiver, Mr. Banks, who represented the Government.

Q. Now, will you describe further what took place there in the preliminary stockholders' meeting? A. There was a stockholders' meeting called previous to 12 o'clock. The precise hour has gone from my memory now, I should think, at about half past eleven, and I was called to preside at that meeting, and I did so. Questions were put of a variety of character and passed upon.

Q. Was there any disorder in the room? A. No, sir; then there was not any. There were not a great many people there then. Most of the party who were at my right hand were those present, and a very small proportion of those who gathered at the left hand were present at that time.

Q. Which party stood on your right hand? A. The party in favor of our ticket.

Q. And the other party stood on your left? A. On the left.

By Mr. STRAHAN:

Q. Which side do you say were principally present? A. Those in favor of our ticket were principally present, but not so large a portion

of those as afterwards assembled there quite. There was a large number, but the crowd was not as large as it subsequently became.

By Mr. CURTIS :

Q. When did the crowd subsequently become larger? A. It continued to increase until after 12 o'clock. At 12 o'clock there was another meeting organized, immediately after the clock struck twelve; after our watches showed that it was 12 o'clock there was another meeting organized, and I was declared the chairman of that. We then passed resolutions appointing officers to preside at the election, and after those matters were disposed of the crowd was still pretty large, and it remained so there until about ten minutes or a quarter past twelve o'clock, when Mr. Hendricks—I say Mr. Hendricks, he was not in sight, but I knew his voice perfectly—went out on the steps in the hall; and when there on the steps—I did not actually see him there, I presumed he was there from his voice; he seemed to be elevated—he addressed the crowd there, and that took a great many out of the room. I then heard motions made there for the organization of a stockholders' meeting.

Q. In the hall? A. In the hall, and heard some of the results declared, but I don't recollect exactly what they were.

Q. Did you look into the hall, or look among the crowd which was standing there in the hall? A. Yes, sir; a few moments afterwards I did.

Q. Did you see men there who were in the employment of the road as laboring men? A. Yes, sir.

Q. Did you observe whether they had any clubs in their hands? A. I don't recollect that I did see clubs, sir. If I did, I have forgotten it.

Q. After these two organizations of stockholders' meetings had taken place, then the election, the two elections or the double election, went on, did it not, two different polls for the Board of Directors? A. Yes, sir.

Q. Were you present in the room when the Sheriff came and informed Mr. Ramsey that he had a process against him? A. No, sir; I was not in the room. I saw him immediately afterwards. I was not in that room. I think the Sheriff entered the general office.

Q. Where did you see him immediately afterwards? A. I saw him in the small room which separated the room in which we held our stockholders' meeting and the Directors room, which we occupied.

Q. Do you know where the Sheriff first spoke to him? A. No, sir; I do not.

Q. What next did you observe in regard to Mr. Ramsey's movements after the Sheriff had come there? A. I observed him moving about to get bondsmen, and was attracted to it by the actions of George Clarke, who was present sustaining Mr. Ramsey.

Q. Were you present when the bail bonds were signed, in that room where they were signed? A. I don't recollect seeing them signed.

Q. Did you see Mr. David Dudley Field there at that time? A. Yes, sir.

Q. Did you at any time see him standing between the doors that connected the two rooms ; if I understand it, there were folding doors there, were there, between the two rooms, such as these? A. No, sir ; there is a single door between the Directors' room and I think what was called the President's room, and then a single door passing from the President's room into the main office.

Q. Where you were you could observe Mr. Field? A. I saw him ; yes, sir.

Q. Did you see him move about? A. I did, sir.

Q. Did you frequently have conversation with him? A. I had several times.

Q. Did you at any time after the Sheriff came there hear Mr. Field address any remark to Mr. Ramsey? A. No, sir ; I don't recollect it.

Q. Was it not rather a matter of local excitement in Albany ; was not, rather the local interest enlisted against any change in the management of the road? A. Well, there was a larger number of active individuals in the city of Albany who were actively engaged in opposition to the change, perhaps, than there were in favor of it, but I am not prepared to say that a larger proportion of the citizens of Albany were opposed to it.

Q. I think you were not at that time an officer of the Company, were you? A. No, sir.

Q. What is the extent of the property in which you are interested that this road passes through? A. In the two towns through which it passes—

Q. Which are those? A. In fact, in three towns through which it passes—four, through which it passes—Bethlehem, New Scotland, Gilderland and Knox it runs through, and my interest there at that time was of the value in those four towns of fully \$200,000.

Q. Consisting of lease-hold property? A. Consisting of lease-hold property.

Q. Farming land? A. Yes, sir ; then the adjoining towns up on the mountains, which were very directly influenced by its construction and management, was very much larger.

Q. You had the same description of property in those adjoining towns? A. In the adjoining towns of Berne, Westerlo and Reusselaerville.

Cross-examined by Mr. STICKNEY :

Q. Who first spoke to you about bringing about any change in the management of this railroad? A. Colonel North.

Q. Before then you had owned no stock at all, had you? A. No, sir.

Q. And then you bought five shares, didn't you? A. I bought five thousand dollars' worth of it.

Q. How many shares? A. I cannot tell you how many shares. I gave Mr. North \$5,000, and gave him authority to draw on me, or gave him drafts, I have forgotten which, to the extent of \$5,000, and authorized him to purchase for me, and it was purchased at rates varying from thirty to fifty per cent.

Q. Didn't you testify on the trial of the People against the Albany and Susquehanna Railroad Company that you owned five shares of stock and no more? A. In my own name; I say so now.

Q. Was this party of Mr. Fisk, the party which you acted with, called the Church party before this election at all? A. Was what?

Q. Was this party of Mr. Fisk, with which you acted, ever called the Church party before that election for Directors? A. Not that I am aware of.

Q. Never was called so until Mr. Field called it so, was it? A. I don't know whether Mr. Field did or not; it was called so when I was elected President.

Q. You never held your office, did you? A. I was elected, and held a meeting on the day of the election.

Q. That was all you ever did, was it not? A. I never did any official acts, other than the business which came before us at that meeting.

Q. And the Court decided that you were not legally elected, didn't it? A. I think they have.

Q. You say you had positive evidence of dishonesty and bad faith on the part of Mr. Ramsey. Of what dishonesty and bad faith had you any positive evidence? A. Well, in the first place, I knew the man very thoroughly, for I had co-operated with him in getting the bills passed for constructing the road. I there knew him --

Q. I do not wish to interrupt you at all, but please remember what the question is, and answer that, and not take up our time with anything else? (Last question repeated.) A. Well, I am stating now; I am reciting the fact. While getting the bills passed for promoting the interests of the road, he frequently told me the mode in which he got votes for the road, saying that while he was a Senator himself that he would exchange his own vote and vote for a bill that he hated to vote for, which was wrong, but by voting for that bill for such a man he could get his vote for the road, and on one or two occasions I remonstrated with him, and told him that that conduct was not the conduct of a legislator, and that I would let a bill fail, no matter what my interests were, rather than to degrade myself by such a course of management.

Q. You spoke of dishonesty and bad faith in the management, and I want you to specify? A. He was the Manager of the road at that time. He was a Director in the road at that time, and the President of it, and managing its affairs, and getting different bills through.

Q. Working with you? A. He was working to get these bills through; yes, sir. I was interested in getting them through, but not by such base means --

Q. Can you specify any instance of dishonesty or bad faith in the management of this road which you had positive evidence of. I don't see that you have yet done so? A. During what period of time?

Q. During any period of time. A. Yes, sir; I have had positive evidence from the affidavit of Mr. Ramsey in Court, and the testimony of Mr. Ramsey in Court, and the testimony of Mr. Groesbeck

and a provision of law of Mr. Ramsey's, showing that to carry out a scheme for the purpose of getting a majority of the stock, he introduced —

Q. Let me interrupt you one moment; you have spoken of things that you had evidences of at this time, July, 1869. Had you evidences of them at that time? A. No; that is why I asked the question, and you gave me —

Q. My question was to matters that you had then evidence of. A. I asked that very question for guidance, and you misled me.

Q. What you had evidence of at that time? A. Previous to that time I never had anything personally to do with the road, and never knew anything, of my own observation, of his individual acts.

Q. Then there is nothing that you could specify on that point, as I understood you? A. These other acts occurred afterwards.

Q. You found that it was necessary to purchase other stock, and you say contracts were procured to sell or to buy town stock at par. Was the price paid in cash at par for any of that stock that your party bought, as far as you know? A. I don't know, sir.

Q. You were present at the election, were you not? You have testified so. You were also present at the meeting the night before the election, were you not, at the Delavan House? A. Yes, sir.

Q. When Mr. David Dudley Field was there? A. Yes, sir.

Q. And when the plan of operation for your party was arranged, was it not? A. Partially so.

Q. And you testify that your stockholders' meeting began at 11½ o'clock, or about that? A. No, sir; I did not.

Q. I understood you so to testify? A. I said there was a general meeting called at half past eleven o'clock.

Q. A general meeting then called at half past eleven? A. Yes, sir.

Q. There had not been any previous notice of that meeting, had there? A. Not that I am aware of.

Q. Wasn't the regular notice, that was published for the stockholders' meeting, a notice for a meeting at 12 o'clock—the annual stockholders' meeting? A. There was not any notice published for any annual stockholders' meeting at any time.

Q. Was not that the regular hour at which the annual stockholders' meeting was to be held? A. The annual meeting for the election for Directors was to be held at that hour.

Q. That was a meeting of stockholders, wasn't it? A. They were the only parties permitted to vote.

Q. How happened you and these other gentlemen to begin your meeting at half past eleven, then? A. It was a public meeting called there.

Q. How happened you to be there? A. We were there for the purpose of looking after our interests.

Q. Was there no arrangement for your being there at half past eleven? A. It was recommended at the previous meeting that we should all be there in time.

Q. Was not that particular hour, or some hour pretty near that, mentioned? A. It was spoken of, that perhaps the affairs would want to be looked into and discussed, and that a public meeting might be called.

Q. At half past eleven? A. Well, I am not certain that the precise hour was fixed.

Q. Is not that your best recollection? A. I think it was recommended that a meeting should be called before 12 o'clock—a general meeting.

Q. And was not that discussed and arranged the evening before, at the Delavan House? A. It was talked of there.

Q. And that was really the reason that you had your meeting at half past eleven, or thereabouts, wasn't it? A. The Directors made their motion there about that time.

Q. And before the motion was made, did you see Mr. David Dudley Field and Mr. Fisk go in the room of the company there? A. Before the general meeting?

Q. Yes, before that motion was made at the general meeting? A. Well, I rather think I did.

Q. Were you there when they went up the stairs? A. I don't recollect seeing either of them entering the room. They were there during that meeting.

Q. And at the beginning of it, too? A. I should think near the beginning of it, or at the beginning of it.

Q. Had you also heard it mentioned or not, at this evening meeting at the Delavan House, that any men were coming up from New York to attend that meeting? A. Not at that meeting, I didn't hear it.

Q. Are you sure? A. I think so.

Q. Didn't you testify so, on the trial of the case of the People against the Railroad Co.? A. I may have testified—I say I am not sure when it was; I was going to add that I heard that evening that there were.

Q. The evening before the election? A. The evening before the election, that there were a number of men coming up as representatives of the stock of the company.

Q. Provided with proxies? A. Provided with proxies or with stock, I don't recollect which.

Q. From New York city? A. They were in the train coming up, I understood.

Q. Do you remember whose name was mentioned as the party in charge of them? A. No, sir.

Q. Did you hear Mr. Fisk or Mr. Field say anything on that point, that men were coming up from New York? A. I never heard Mr. Fisk say anything.

Q. Did you hear Mr. Field? A. Well, I don't know that I did.

Q. What is your recollection on that point? A. I cannot recollect that I heard him.

Q. But it was spoken of there in his presence? A. I heard that they were coming up. No, I cannot swear it was in his presence.

Q. He was there during the greater part of that evening? A. Yes, sir; but I have not sworn distinctly that it was told to me at that evening.

Q. That is your best recollection, as I understand? A. No; I say I heard it that evening, but I am not certain that I heard it in the room in the Delavan.

Q. And one of the first things done at this general meeting which you have mentioned at half past eleven, was to elect new Inspectors, wasn't it? A. No, sir.

Q. That was done some time before 12 o'clock, wasn't it? A. I think not.

Q. Are you certain on that point? A. I am not positively certain, but I think not.

Q. Do you remember that the names of Mr. Bush, Mr. Harris, and Mr. Oliver were mentioned as Inspectors to be chosen, and were so mentioned the evening before, or mentioned as proper persons—mentioned in connection with the office of Inspectors? A. Well, I think it probable they were. Mr. Harris, I think, was spoken of as a man fit to be an Inspector in case any emergency arose in which the present Inspectors could not act.

Q. Do you remember who mentioned his name? A. I do not. I do not recollect the others precisely. It was stated at that meeting the evening before that the present Inspectors were not eligible to hold office, and they probably would not act.

Q. Was it mentioned why they would not act? A. The first information that I had upon the subject was from Mr. Hand, who was one of the Inspectors.

Q. One of the Inspectors appointed the year before? A. Yes, sir; and he that day was discussing his eligibility.

Q. Which day was this? A. That was the day of the evening on which we had this gathering at—

By Mr. PRINCE :

Q. The day before the election? A. The day before the election, and he said that he doubted his own right to act if he was objected to.

Q. Have you a distinct recollection of such a conversation as that with Mr. Hand? A. I have a distinct recollection; it was not a conversation held with me, but it was a conversation—

Q. Have you a distinct recollection of hearing him say so? A. Yes, sir.

Q. What was said on that evening before the election as to an injunction restraining those Inspectors who had been appointed the year before? A. Well, I don't recollect.

Q. May I show you your testimony. A. I should be very glad to refresh myself; this thing has gone out of my mind.

Q. There is the testimony, (showing witness the document.) You remember then the names of Mr. Bush, Mr. Harris and Mr. Oliver were mentioned? A. I don't now recollect, except as my recollection is refreshed from seeing my testimony there.

Q. You have no doubt that that is so? A. Undoubtedly; I was fresh on the whole thing, and knew it, but I distinctly recollect that Mr. Harris was; Mr. Bush and Mr. Oliver I don't so much recollect; I didn't know them so well.

Q. You have spoken of men who were present on the Ramsey side, or the other side, in another portion of the room, and you have mentioned the name of Mr. Thomas Mulhall; where did you see him? A. I saw him very prominently on that left hand side of the room.

Q. In the room where? A. In the Directors' room, where our general meeting was, and where our stockholders' meeting was held.

Q. What name of any other man can you mention that you saw in there besides those that you have named? A. Well, I can't recall their names; I knew them, and knew their names at the time, but I have forgotten what they were.

Q. You speak of their being present on the other side; what knowledge have you who brought them there, or who procured them to attend there? A. Well, I have no knowledge of it from having personally witnessed any arrangement with them.

Q. Have you any knowledge? A. Mulhall proclaimed himself and his party all in favor of the Ramsey party there, very openly.

Q. Have you any knowledge who got them to go there, or who procured them to be there? A. I have not, sir.

Q. And this disturbance that you speak of took place where, in that room, at all? A. Yes, sir; in that very room, within three feet of where I was standing, and I got up out of the way, on the top of a table, to get clear of it.

Q. Do you know what men made that disturbance? A. Tom Mulhall and the gang who were with him, were the prominent ones in it. He set on a set of roughs there who were under his guidance.

Q. You said that the police came out to repress the disturbance? A. I did; the Chief of Police had a very severe tussle.

Q. From where? A. Came out from the President's room.

Q. Into that room? A. Yes, sir.

Q. What was his name? A. I knew him very well, but I declare I have forgotten his name.

Q. There had never been any notice for more than one stockholders' meeting, had there, and there had never been more than one stockholders' meeting held until this year, that you know of, had there? A. I never knew of anything connected with it. I never had anything to do with the affairs of the Company before, in its official management.

JOSEPH W. SPOFFORD, a witness, called for the prosecution, sworn.
Examined by Mr. STICKNEY:

Q. What is your occupation? A. Bookkeeper in the Tenth National Bank.

Q. The papers now shown you are original slips from the files of that bank? A. They are, sir.

Q. Showing the checks that your bank received on the 14th—or which day? A. On the 15th.

Q. Showing checks that your bank received on the 15th of July, 1871, through the Clearing House? A. Yes, sir.

Q. And which checks were paid by your bank? A. They were.

Q. Checks on your bank? A. They are not all of them on our bank; we redeemed for the Bowling Green Savings Bank, and some of them were checks drawn on that bank, and went through the Clearing House to us for redemption.

Q. Will you state how many checks for \$3,000 your bank received from the Clearing House on the morning of the 15th of July, 1871, and paid? A. There were only two.

Q. And those checks which you received on the 15th of July, 1871, would be in the ordinary course of business, checks which were deposited in the other bank, from which it came through the Clearing House, on the day before the 14th, would they not? Is that the ordinary course of business? A. That is the ordinary course, yes, sir; a person might keep one in his pocket for a week or so.

Q. Will you state whether this slip which is now shown you, headed "No. 68, Tenth National Bank, from No. 44, National Shoe and Leather Bank," contains a check of \$3,000? A. It does, sir.

Q. That check then for \$3,000, in the ordinary course of business, would have been deposited in the Shoe and Leather Bank, on the 14th of July, 1871, would it not? A. In all probability it would; yes, sir.

Q. And it was a check drawn upon your bank, was it not? A. I should say it was.

Q. Refer now to this slip, which is now shown you; the Bowling Green check on that bank, for \$3,000, appears to have come through the Clearing House, from what bank? A. The only means of ascertaining is this number here, No. 13, which I suppose refers to the number of the Merchants' Exchange Bank, in the Clearing House.

Q. The clearing number? A. Yes, sir; the number of the bank in the Clearing House.

Q. It corresponds, does it not, with the \$3,000 check mentioned on the clearing slip of the Merchants' Exchange Bank, for the same date?

Mr. ANDREWS:

Corresponds in what respect?

A. Only in amount, sir.

By Mr. PRINCE:

Q. Let me ask one question: you have stated that there were only two checks of \$3,000, which came to your bank through the Clearing House, on the morning of the 15th of July? A. Yes, sir.

Q. Have you any way of ascertaining whether either one or both of those checks were on the Bowling Green Savings Bank, or whether they were on your bank? A. I can only judge by the fact that there

was a check of \$3,000 charged to the Bowling Green Savings Bank on that day.

Q. And only one? A. And only one, charged to them on that day.

Q. One of those \$3,000 checks was drawn on your bank, and one on that bank? A. Yes, sir.

By Mr. STICKNEY:

Q. From this slip the check on the Bowling Green Bank for \$3,000, paid by you on that day, appears to have come through the Clearing House, from what other bank? A. As near as I can determine, it came through the Merchants' Exchange Bank, from the fact of that number 13 being on there.

Q. And then what check for \$3,000 on your bank, coming through the Clearing House, was paid on that morning, the check of what depositor? A. Check of Jay Gould.

Q. And of any other? A. No other.

No cross-examination.

THOMAS H. SCANLON, a witness called on behalf of the prosecution, sworn. Examined by Mr. STICKNEY:

Q. What was your occupation in March and April, 1869? A. I was employed by Pinkerton's National Detective Agency.

Q. Were you about that time employed by the Union Pacific Railroad Company, or by any other parties connected with it? A. No, sir; I was employed by Mr. Pinkerton about that time.

Q. What were you directed to do? A. Well, different business connected with them; under the immediate direction of a superintendent of the Branch Office, here in New York, Mr. Davies.

Q. Did you often, during that time, see Judge Barnard? A. Yes, sir, I did occasionally see him.

Q. Were you employed to watch Judge Barnard? A. I was employed by Mr. Davies to watch Judge Barnard, to shadow him.

By Mr. HILL:

Q. What is to "shadow him"? A. That is to watch him.

Q. Do you know James H. Coleman? A. Yes, sir.

Q. Did you, about this time, often or not, see Mr. Coleman and Judge Barnard in company with one another? A. Well, sometime in the latter part of April, to the middle of May, I think I did, frequently.

Q. Did you see Judge Barnard and Mr. Fisk in company with one another at any times? A. I don't remember of ever seeing them in company, but I think the Judge called at his office once or twice

Mr. CURTIS:

Testify to what you know and saw. A. I know that the Judge called at his office once or twice.

Q. You saw him there at Mr. Fisk's office? A. I saw him go in his office.

Q. Did you see him in the office after he went in? A. No, sir.

Q. Did you see him at any time examining any papers with Mr. Fisk? A. I don't remember that I did.

Q. Did you ever see Judge Barnard and Mr. Coleman, and Mr. Fisk, in company with each other, about that time? and if so, state where.

Judge BARNARD :

About what time?

Q. March and April? A. Not in March and April; in the latter part of April, and about the beginning of May, I think—I know that Judge Barnard and Mr. Coleman went into the Opera House, here next door, and they went into a box, and I saw Mr. Fisk come out of the box afterwards, but whether they had seen him in the box or not, I am not able to state.

Q. Had they gone out between the time when you saw them go in and when you saw Mr. Fisk come out? A. It is some time ago, I cannot state positively.

Q. What is your best recollection on that point? A. I cannot state definitely. I know they went in the box. Mr. Fisk came out afterwards; I inferred that the Judge and Mr. Coleman had seen Mr. Fisk.

Q. Do you know where Helen Josephine Mansfield lived at this time? A. 18 W. 24th Street.

Q. Have you ever seen Judge Barnard go in there? A. I saw him go in there once.

Q. More than once? A. That is all that I can remember.

Q. What is your best recollection on the point? A. I am sure that I saw him go there once.

Q. Have you any knowledge with whom? A. I think he was alone.

Q. Did you see Mr. Fisk there during the same evening? A. No, sir.

Q. Had you seen Mr. Fisk go in, or did you see him come out during that evening? A. No, sir; I don't remember; I might have.

Q. And this was about what time, as nearly as you remember? A. It was sometime between the 24th or 25th of April, and the 8th or 9th of May.

Q. Had you frequently seen Mr. Fisk go in there in 18 West Twenty-fourth street, where Miss Mansfield lived? A. Yes, sir.

Q. How often? A. I suppose half a dozen times, while I was shadowing him.

Q. Have you any information whether Miss Mansfield afterwards lived at 359 West Twenty-third street or not? A. Some time after she was here, I know that she lived at the Jerome House.

Q. Have you any knowledge whether she lived at 359 West Twenty-third street or not? A. At that time?

Q. No; at some time since? A. Oh, yes; I know she lives there now.

Q. Have you any knowledge when she first lived there? A. No, sir; I don't remember.

Cross-examined by Mr. CURTIS:

Q. What is this establishment of Pinkerton's—a private detective agency? A. Yes, sir. Mr. Pinkerton is the principal and sole owner.

Q. Mr. Pinkerton is the principal and sole owner? A. So I have been informed.

Q. Were you at this time one of his regular people in his employ? A. Yes, sir.

Q. Who instructed you to follow and watch Judge Barnard? A. Superintendent Henry W. Davies.

Q. The superintendent of Mr. Pinkerton's establishment? A. Of his New York branch.

Q. And what instructions did he give you? A. He ordered me to go out with another operative, who told me who Judge Barnard was. I didn't know the gentleman at the time, and he told me to shadow him, and see where he went to.

Q. Shadow him? A. Yes, sir.

Q. That, I suppose, is a flash term in your profession, isn't it? A. Yes, sir; it means to follow the party wherever they went, and see where they went.

Q. Were you instructed to follow him day and night? A. Yes, sir.

Q. At all times? A. Follow him from the time that he left his house until he returned to it for the night.

Q. Did you take up your station opposite to his house? A. Different parts of the street.

Q. When he came out you followed him? A. Yes, sir.

Q. And you traced him wherever he went? A. Yes, sir.

Q. How long was that kept up? A. As far as I know anything about it, I was on it from about the 24th or 25th of April, until sometime in May, I can't say; about the middle of May.

Q. About three weeks? A. About three weeks, perhaps longer. I am not certain.

Q. Were you given any particular instructions as to tracing him into any particular places? A. I don't think I was, sir. I think all the instructions I got was to shadow him, and be particular to state where he went to, the time, etc.

Q. Did you understand who had employed Pinkerton and Co. to do this work? A. I did not.

Q. You only knew what you were told to do, and reported accordingly? A. That was all.

Q. How often did you make your report? A. Every morning the report was written, before I left the office, as a general thing.

Q. You made your report in writing? A. Yes, sir.

Q. Who lived at 18 West Twenty-fourth street at the time you speak

of, when you say you saw Judge Barnard go in there? A. Well, I was told that Mrs. Mansfield lived there.

Q. Who told you so? A. I was told by one of our operatives, who went there to investigate.

Q. But you don't know it from any other source, do you? A. Well, I know it since then, that she lived there at that time.

Q. How did you learn it since that she lived there at that time? A. It was told by a party who visited there.

Q. Who was that? A. I decline to tell his name.

Q. Oh, but you can't decline to tell anything here; you are as it were a public character; besides, I want to know who it was that said that Miss Mansfield, or Mrs. Mansfield, lived there at 18 West Twenty-fourth street? A. Well, it was a person by the name of Collins.

Q. What is Mr. Collins? A. Mr. Collins was in the habit of going there with groceries.

Q. He supplied the house with groceries? A. No, I guess he was merely a clerk, in the employ of others.

Q. In whose employ was he? A. I don't remember who he was with then.

Q. He told you that Mrs. Mansfield lived there, did he? A. Yes, sir.

Q. At that time? A. No, sir; this was sometime afterwards.

Q. How long afterwards? A. I asked him one day who lived there, and he told me Mrs. Mansfield. "Oh," says I, "does she live there yet?"

Q. How long after the time you suppose you saw Judge Barnard go into that house? A. I could not say exactly; it might have been a week, or ten days, or a month.

Q. When you saw Judge Barnard and Mr. Coleman go into the Opera House, or Erie Railway building, where were you? A. I was somewhere after him, somewhere close to him, somewhere on the street.

Q. You were there watching their movements, were you? A. I was watching the Judge's movements.

Q. And you saw them go into the street door? A. Yes, sir.

Q. Did you follow them up-stairs? A. I saw them go into the door up-stairs.

Q. Into what door? A. On the second floor.

Q. What apartment or room is that? A. I cannot describe it exactly, but the door is on the left hand side, after you turn up off the stairs, just to the left. The room they went into was the room on the southeast corner.

Q. Do you know whether it is a room connected with the Erie Railroad office, or with the theatre? A. This did not happen in the theatre at all; this happened at 187 West street.

Q. Oh, down town? A. Yes, sir.

Q. The lower office? A. Yes, sir.

Q. Before they moved up here? A. Yes, sir.

Q. Do you know what their business was? A. Whose business?

Q. The business of these gentlemen, Judge Barnard and Mr. Coleman? A. No, sir.

Q. You don't know what they went there for? A. No, sir.

Q. Do you know whether that was the ticket office or not? A. Well, I suppose they might have sold tickets there to oblige the Judge.

Q. You don't know whether they went there for tickets or something else? A. I don't know what they went there for.

Q. You simply saw them go into that door? A. I simply saw them go into that room.

Q. And that was all? A. I saw Judge Barnard go into that room.

Q. Then you reported this fact the next day at Mr. Pinkerton's office? A. Yes, sir, reported everything that I saw; not only that, but every other place that the Judge went.

Q. Did you see who was in that room with them when in there? A. No, sir, I cannot remember now who was in there.

Q. Did you make any effort at the time to ascertain? A. I did; yes, sir. I went out into a house next door, and saw who was in the room through the window; the windows were prominent, and you could see a part of the office.

Q. Did you look through the windows? A. Yes, sir.

Q. Did you ascertain who was in the room? A. No, sir, I did not; I don't remember who was in the room.

Q. Then you certainly don't mean to be understood as testifying that Mr. Fisk was there, do you? A. I don't know.

Q. How? A. I don't know who was in the room.

By Mr. STICKNEY :

Q. What room was that? A. It is a room that I used to see Mr. Fisk in frequently, and said to be his office.

By Judge BARNARD :

Q. Were you employed some few years since upon the Brooklyn City Railroad? A. Two years ago? No sir.

Q. Some four years ago? A. Yes, sir.

Q. You left there, did you not? A. Yes, sir.

Q. What did you leave for? A. I believe I was discharged.

Q. For dishonesty? A. No, sir.

Q. Wasn't the charge against you for stealing? A. No, sir; they never told me so.

Q. Why were you discharged? A. I don't know, sir; I never made any inquiries.

Q. They called you up and simply told you you were discharged? A. No, sir; Mr. Jones told me my services were no longer required; about that time I was applying for a situation on the Park police, and I never made any further inquiry.

Q. Some six months afterwards were you employed on the Sixth Avenue Railroad Company, in New York? A. I was on the Sixth Avenue Railroad Company. I don't remember exactly the date.

Q. Were you discharged from that? A. Yes, sir.

Q. What for? A. They didn't give me any statement as to why I was discharged, although I repeatedly asked them.

Q. Didn't the superintendent tell you it was for stealing? A. No, sir.

Q. Did you enlist in the United States marines at one time? A. No, sir.

Q. Were you not stationed at the Navy Yard as a marine? A. Never.

Q. Never enlisted? A. No, sir.

Q. And never deserted? A. Never deserted.

Q. Were you discharged from Pinkerton's a year and a half ago? A. Yes, sir, I was.

Q. For what? A. Well, there was a misstatement of a report, and Mr. Davies, before he looked properly into it, in a fit of anger discharged me.

Q. Was it not for falsifying reports for money? A. No, sir.

Q. You are sure of that? A. No, sir; it was not.

Q. Were you in Anderson's Zouaves? A. I was.

Q. How long did you stay there? A. I was with them for two years.

Q. Why did you leave? A. I left at the convalescent camp.

Q. Nothing in the world except sickness? A. Nothing but disability.

Q. You were not drummed out? A. No, sir; I have my honorable discharge to show; I can show it in twenty minutes.

By Mr. ANDREWS:

Q. Where did you live in the year 1869? A. I lived at the agency.

Q. Did you sleep at the agency? A. Yes, sir.

Q. Didn't you ever live in Amity street? A. No, sir.

Q. You never did? A. No, sir.

Q. Were you in the habit of visiting a house of ill-fame in Amity street? A. No, sir; I never was in a house of ill-fame except when I was sent there on business for the agency, in my life, and never slept in Amity street.

Q. You never slept in Amity street at all? A. No.

Q. You don't know any woman there who keeps a house of prostitution? A. I don't know that I do.

Q. Where did you live in the year 1870? A. In the agency, I believe.

Q. Were you in the habit of sleeping there? A. Yes, sir.

Q. Now, on these times that you say that you followed Judge Barnard, are you willing to swear that you followed him in every instance that you have spoken of? A. All those places; yes, sir.

Q. All those places? A. Yes, sir.

Q. Who was with you? A. Different operatives.

Q. Can you name one of them? A. Yes, sir.

Q. Name them? A. Mr. Shiltz.

Q. Name another? A. Townley.

Q. Where is Mr. Townley? A. He is somewhere in the West.

Q. Where is Shiltz? A. He is somewhere here in the city.

Q. Any others? A. Yes, sir.

Q. Name any other? A. Mr. Spencer.

Q. Is Mr. Spencer here? A. I believe he is in Europe; and Mr. Dempsey.

Q. Where is Mr. Dempsey? A. I don't know where he is; I think he is in Brooklyn.

Q. On some of these occasions, didn't you get so intoxicated that you could not follow Judge Barnard and give it up, and the others followed him? A. Not to my knowledge.

Q. Well, recollect about it, and see whether you did or not? A. I don't remember of ever being so intoxicated that I could not follow Judge Barnard.

Q. How did you follow him; did you follow him in a carriage generally? A. Sometimes; once or twice.

Q. When he came out of his house to go anywhere, did he go in a carriage generally? A. Well, I don't know; I don't remember, generally.

Q. If he took a carriage, then what did you do? A. Sometimes we would follow it on foot if we could, and if not, we would get a carriage.

Q. How, then, would you manage to tell whether you were following his carriage or not? A. One used to generally go for the carriage while the other watched.

Q. While the other ran after the carriage he was in? A. Yes, sir.

Q. You made several reports about Judge Barnard, didn't you? A. Yes, sir.

Q. Where are those original reports? A. I believe that they are destroyed in the Chicago fire.

Q. Those original reports were all burned up, were they not, in Chicago? A. I don't know; I was not in Chicago.

Q. You have understood so, haven't you? A. I have heard that the reports were burned up.

By Mr. CURTIS:

Q. Do you know how these gentlemen who have now examined you obtained a knowledge of these reports? A. I don't know, sir.

Q. Were you not in consultation with Mr. Pinkerton and other detectives yesterday, who told you that you must come here to testify? A. No, sir.

Q. Were you not Saturday? A. With Mr. Pinkerton?

Q. Pinkerton and Davies, or Davies alone? A. Mr. Davies; yes, sir.

Q. Did you go over the matter to see what you were to testify to? A. He said that he wanted to refresh my memory.

Q. Your memory was not very good about this until he refreshed it, was it? A. Well, I don't know; I don't think that anything that he could say could influence me.

Q. I don't say it could, but I say your memory was not perfect in this matter until he refreshed it on Saturday, was it? A. Well, I don't know; it was not as perfect, perhaps, because there are many things since then that have occupied my mind that I paid more attention to.

Q. When you had this consultation on Saturday, were you entirely ignorant as to dates, as far as your memory was concerned, until he refreshed it? A. Well, sir, my memory was as good as to the dates that I certified to here, before he said anything, as it is now.

Q. It was? A. Yes, sir.

Q. Do you know Thomas C. Durant? A. No, sir, only by reputation; I have heard of him.

Q. Were you not employed, or some of the detectives employed, for four months to follow Judge Barnard by him? A. Not that I know of, or at least I don't know.

Q. Don't you know that some of your detectives followed Judge Barnard for four months, and made a report to Mr. Durant? A. No, sir.

Q. That they could find nothing against him? A. No, sir.

Q. And charged \$4,000 for it? A. No, sir; my position with Mr. Pinkerton was a salaried position, and I never knew who employed him to do the work; that is a part that they don't generally let their operatives know.

By Mr. HULL:

Q. What is your business now? A. I am still with Mr. Pinkerton.

By Mr. PARSONS:

Q. When did you go back to Mr. Pinkerton after having been discharged by Mr. Davies under the circumstances you have stated? A. I believe I was away about two weeks.

Q. And then did the misapprehension correct itself? A. Yes; then Mr. Davies sent for me and employed me.

Q. You have been there ever since? A. Yes, sir.

By Mr. STICKNEY:

Q. In which room of the Erie Railway building was this that you saw Judge Barnard in? A. It was, in a room on the second floor, on the southeast corner of the street.

Q. Where did the ticket office used to be in the building at that time? A. I don't know, sir; I always supposed that office was Mr. Fisk's private office, because I used to see him there frequently when I shadowed him. I shadowed Mr. Fisk as well as Mr. Barnard.

Q. Did you use to see Mr. Fisk go into the room often? A. Yes, sir; I was told by different parties that it was Mr. Fisk's private office, or Mr. Fisk's office; I don't know as it was a private office.

By Mr. CURTIS:

Q. What is the pay of operatives in your position? A. That de-

pende—I don't know what the pay of any operative in the agency is, except myself.

Q. Well, what is your pay? A. It is probably about \$900 a year.

Q. Is it a regular salary? A. Yes, sir.

Q. Expenses added, extra expense, such as carriage hire, etc.? A. They are paid for, yes, sir.

Q. Extra? A. Yes, sir.

Q. Does your pay depend at all upon the intelligence that you furnished? A. No, sir.

Q. It is a salary, is it? A. Regular salary.

Q. And you go here and go there, as you are directed? A. Yes, sir.

Q. And do what you are directed? A. Yes, sir.

By Judge BARNARD:

Q. Did you ever make any false reports? A. On what occasion?

Q. On any occasion. A. Not knowingly.

Q. Was it ever charged against you that you did? A. Yes; on that occasion it was charged against me.

Q. No other occasion except that one? A. No, sir.

Q. Sure? A. Yes, sir.

Q. Now, Mr. Scanlon, when was that, in '68 or '69, that you saw Judge Barnard in West street go up into the building in Mr. Fisk's private room; was it 1868 or 1869? A. It was in 1869.

Q. Certain about it? A. Yes, sir.

Q. How do you fix your memory that it was 1869? A. Because I went to Mr. Pinkerton's in 1869.

Q. And the office was down there then? A. Yes, sir.

Q. Not up at the Opera House? A. No, sir.

Q. In March or April, 1869? A. In April or May, 1869.

By Mr. HILL:

Q. For what length of time did you watch Judge Barnard, or shadow him, as you call it? A. For about three weeks.

Q. That is your best recollection? A. Yes, sir; that is, from about the 24th or 25th of April until some time in May; I can't say exactly, about the middle of May.

Q. That is all the time that you ever watched him? Yes, sir.

Q. Was it during the same time that you watched Mr. Fisk? A. Well, sometimes I would see Mr. Fisk—

Q. No, employed; was it during the same time, the same three weeks, that you was employed to watch Mr. Fisk? A. Well, I think it was after that, that I was sent on Mr. Fisk.

Q. For what length of time, then, did you watch Mr. Fisk? A. I could not tell exactly.

Q. What is your best judgment? A. It might have been two or three weeks, and it might have been not so long.

By Mr. STICKNEY :

Q. By means of what did Mr. Davies refresh your memory? A. From his reports.

Q. A copy of those that were made at the time? Yes, sir

By Mr. PARSONS :

Q. A report that you had made at the time? A. From a copy of the reports.

Q. That had been made on the information which you furnished to the agency? A. Yes, sir.

By Mr. ANDREWS :

Q. Who made the copies? A. I don't know who; I suppose one of the clerks.

Q. Did you make a verbal report? A. A verbal report of what?

Q. A verbal report of your following Judge Barnard? A. No, sir; a written report every day. Each day they call for a written report of the duties, whatever they are.

Q. Can you write? A. Yes, sir.

Q. Now, was it your written report that you made that Mr. Davies used to refresh your memory? A. No, sir, it was not.

Q. What was it? A. It was from notes of the general operation.

Q. It was not from your reports? A. It was taken from my reports.

Q. How do you know? A. I suppose so. This report didn't alter my knowledge of the thing at all.

By Mr. PARSONS :

Q. Or your recollection? A. Or my recollection.

By Mr. PRINCE :

Q. A. You recollect these matters, then, of your own memory, outside of that? Yes, sir.

By Judge BARNARD :

Q. Did anybody else live in Twenty-fourth street, that you heard, except Mrs. Mansfield, or Miss Mansfield. A. I don't remember now.

Q. Do you remember whether it was a boarding-house? A. I don't remember what it was.

Q. I simply ask because I want to inform myself. I don't want the reporters to take it down.

WILLIAM BUCKLEY, a witness, called for the defence, sworn. Examined by JUDGE BARNARD :

Q. At one time were you an officer of the Supreme Court? A. Yes, sir.

Q. Up to how late? A. The 23d of December.

Q. What year? A. 1871.

Q. Were an officer during the months of May, June, July or August? A. Yes, sir. I was an officer.

Q. Of the Court? A. Yes, sir.

Q. What portions of those months were you in attendance there, regular, at Chambers? A. Up to the third Monday of June.

Q. Were you there every day when Judge Barnard held Court? A. I was there every day through the month of June, up to the third Monday—the Saturday previous to the third Monday.

Q. Regularly? A. Every day.

Q. How near did you stand to Judge Barnard? A. I could not tell; as near as I am here to that book; not over three feet, so as to reach papers—pass papers to the Judge.

Q. Did you ever hear Judge Barnard use any remark or indecent remark in Court while you were there, in presence of a woman? A. No, sir.

By Mr. CURTIS :

Q. Did you ever hear Judge Barnard say to any counsel before the Court, "Do you think I can tell whether a woman has committed adultery by looking at her?" A. No, sir.

Q. Did you ever hear him say to any counsel in Court, "Do you think I can tell whether a woman will screw by looking at her?" A. No, sir.

Q. Or any language of that kind? A. No, sir.

Cross-examined by Mr. PARSONS :

Q. How long were you an officer of the Supreme Court, attending when Judge Barnard held Chambers? A. That I could not say. I was in Court something like seven years, and I suppose that I was there, except during vacation, every month that Judge Barnard held Chambers, for about that time up to about the 15th of last June, with the exception of the first year, may be the second year, when Mr. Skidmore was there. As soon as he left—I cannot tell the time—I then took his place.

Q. Can you remember all that Judge Barnard said during all that period of time, while presiding as Judge of the Chambers? A. No, sir; I could not remember all that he said.

Q. Can you remember all that he said during that month of June, while he sat at Chambers? A. No, sir; I could not. I think if he made any remark of that kind I should be apt to remember it, for I think it would be very indecent for a Judge to make any remark of that kind.

Q. Was it not your business while you were officer in attendance upon Judge Barnard, when he presided at Chambers—was it not your business to receive the papers which attorneys desired to have handed up to the Judge? A. Yes, sir.

Q. Were you not frequently and very generally necessarily in conversation with the attorneys about these papers? A. Occasionally, I would have to answer some questions.

Q. Was not that very generally? A. Well, no; not generally; occasionally they would ask me questions about papers.

Q. And you would furnish them with an explanation? A. If it was in my power; yes, sir.

Q. This happened every day, did it not? A. Yes, sir.

Q. And frequently during the day? A. Yes, sir.

Re-direct by Judge BARNARD:

Q. During the seven years that you were there, did you ever hear Judge Barnard use an immoral and indecent or an obscene word? A. Never to my knowledge; I have no recollection of anything of the kind.

Re-cross examination by Mr. PARSONS:

Q. When did you say you left, in December? A. Yes, sir; the 23d of December.

Q. Were you present on the occasion when Judge Barnard procured to be brought before him a large number of prisoners from Eldridge street, or took some action in reference to the discharge of a large number of prisoners, who were confined in Eldridge street jail? A. I was in Chambers at that time, but that occurred in another part of the Court, in another room.

Q. Were you present? A. I was in Chambers. That was in Oyer and Terminer. I was not present in the Court where Judge Barnard sat at that time; I was in another part of the Court.

M. L. STODDARD called for the defence. Examined by Judge BARNARD:

Q. You were an officer of the Supreme Court at one time? A. I was.

Q. For how long? A. For about a year, lacking a month and a half.

Q. When did you leave? A. The 15th of November.

Q. While you were such officer where were you stationed? A. I was stationed in Chambers.

Q. Alongside of the Judge? A. Yes, sir; inside of the railing all the time.

Q. What portion of 1870 were you present in Chambers? A. 1871.

Q. 1871, I mean? A. I was present from February 1st, I think, 1871—I went in that room, and remained there until the 15th of November.

Q. Every day? A. That is, with the exception of vacation.

Q. When was the vacation? A. My vacation took place the 15th of July.

Q. Up to that time did you ever hear Judge Barnard say, or did he say, to your knowledge, to a man or woman or to counsel, that he could not tell whether she had committed adultery or not, or whether she would screw, by looking at her? A. No, sir.

Q. Was anything of that kind ever said while you was there? A. No, sir.

Q. If it had been said, do you think you would have been likely to remember it? A. I don't see how I could help it; I am the nearest to you of any one.

Cross-examined by Mr. PARSONS :

Q. When did you cease to be an officer at Chambers? A. 15th of November.

Q. 1871? A. Yes, sir.

Q. During what months in 1871 did Judge Barnard preside at Chambers? A. In June; I won't say what other months, for I forget which Judge did preside, but during that June month General Term was held, and there was several of the Judges sitting there; if I recollect rightly, it was in June.

Q. What were your duties at Chambers? A. As one of the attendants.

Q. Where were you stationed? A. Inside of the railing.

Q. How many officers were stationed there? A. Two, usually.

Q. Who was the other? A. Mr. Buckley, until he went to the country, and then it was either Mr. Allen, or sometimes Mr. McNierney, in and out; several officers would come in when there was any busy day—come in from the other rooms and assist.

Q. Assist behind the rail? A. Yes, sir.

Q. With you? A. With me in passing up papers, etc. That is very often so, especially the first Monday, and in the afternoon when the calendar is called, and it is very busy for two sometimes; it is about as much as two men can do.

Q. Do you mean that some of these officers occasionally, during June, came behind the rail to assist you? A. Yes, sir.

Q. On such occasions, would there be more than two officers ent? A. Very seldom.

Q. Was this the case that other officers came in to assist you, between the 1st Monday of June and the 15th of June? A. Yes, sir; off and on. I took charge mostly, but then, at the same time, there were others that came in, Mr. McNierney, in particular, and Mr. Allen.

Q. Where was Buckley on these occasions? A. Buckley had his vacation.

Q. When did his vacation begin? A. He went down to Staten Island about the 15th of June, I think.

Q. Where was Buckley on these occasions, between the 1st Monday of June and the 15th of June, when other officers came in from other branches of the Court to assist you? A. I cannot tell you where he was, unless he was in the other room, or he might have been in Staten Island.

Q. Was he away from the Court? A. Yes, sir; out of the room.

Q. You remember that he was out of the room? A. Yes, sir.

Q. Are you sure about that? A. In the latter part of June he was out of the room.

Q. I am not speaking of the latter part of June, I am speaking about the interval between the 1st Monday of June and the 15th of June? A. Oh, I won't say no, he was not out of the room; it was the middle of June that he went away.

Q. What do you mean, then, by saying that during that interval intervening from the 1st Monday, other officers came from other branches of the Court? A. I correct that, I mean from the 15th until the end of June.

Q. Is the 1st Monday of June after the 15th? A. No, sir. I corrected myself. I didn't mean to say from the 1st to the 15th, I meant to say from the 15th.

Q. Have you now any certainty as to whether other officers from other branches of the Court came to assist at Chambers between the 1st Monday of June and the 15th? A. No, sir; I can't say, because I don't recollect.

Q. Will you say whether Buckley was there all that time present, or whether he was not. A. I think he was. Mr. Buckley rarely missed a day unless he was sick; most of the time we were both there, either one or the other, every day.

Q. Did he occasionally, during that interval, miss a day from being sick? A. I won't say from the 1st of June to the 15th.

Q. Do you recollect? A. No, sir, I don't recollect.

Q. Did you miss a day during that interval? A. Yes, sir; I might have missed a day during that interval.

Q. How many days did you miss? A. That I don't know. I can't say, because my health is not good; sometimes I did miss a day that I had to remain at the house.

Q. Between the 1st Monday of June— A. I don't know. I might not have missed a single day during June, but I will say that I have very often—or not very often, but occasionally, did miss a day.

Q. With your uncertainty as to whether or not you did miss a day, will you swear, during that interval that Judge Barnard did not make use of the expression about which you were asked? A. No, sir; I never heard Judge Barnard, and I could not.

Q. That is not the question. The question is whether, with your uncertainty as to whether you were there all the time, you will state positively that Judge Barnard did not use that expression? A. If I was there all the time I will state that Judge Barnard did not make that expression.

Q. And if you were not there all the time? A. Then, of course, I can't tell.

BENJ. W. BUCHANAN, a witness called on behalf of the defendant, sworn and examined by Judge Barnard:

Q. What position, if any, do you occupy at present? A. I am an officer of the Supreme Court.

Q. Been there for what time? A. I think I went there in 1848 or 1849.

Q. Do you recollect Judge Barnard holding Chambers at any time in 1871? A. Yes, sir.

Q. What months, as near as you can recollect? A. In September, I was there all the month with him, I think.

Q. During the month of September, 1871, did you ever hear Judge Barnard say in Court to counsel, the plaintiff, the defendant, the witness, "How can I tell whether that woman has committed adultery, "or that she will screw, by looking at her?" A. No, sir.

Q. Was it ever said in your hearing? A. Never.

Q. What other month during that year were you there? A. In June I was in and out during the morning's that you held. There was General Term held in June, and I think you held in Chambers one hour or an hour and a half, I don't know which it was, in the morning. I was in and out while you were holding them; I was not there all the time, but in and out; that is in 1871.

Q. Were you there at all in July? A. Well, if you held Chambers I was there.

Q. I held Chambers for four days. A. If you held Chambers I was there; I was down to Court every day—made it my business to come down every day.

Q. Was any such language as that used that year or any other year, in your presence or in your hearing, or to your knowledge? A. Never.

Q. Did you ever hear anybody say that he heard such a thing? A. Never.

Q. You were appointed one of the officers of the Court fifteen years before you knew Judge Barnard, were you not? A. Yes, sir; for some years before you were made Recorder.

Q. I was elected Recorder in 1857. A. It was long before you were elected Recorder.

Cross-examination by Mr. PARSONS:

Q. Are you assigned to any particular Court or branch of the Supreme Court? A. Yes, sir.

Q. What? A. The General Term when it is in session, and the Circuit, part 2.

Q. Who is the officer of the Supreme Court who attends on Judge Barnard when he holds Oyer and Terminer? Have you attended on him when he has held Oyer and Terminer during the past year? A. I have not been assigned there, but I have been in attendance there a good deal. I will explain it in this way: when my Court is not in session, if there is anything going on in the Court of Oyer and Terminer it is very likely I would be there, whether Judge Barnard was holding it or any of the other Judges.

Q. Were you present on an occasion during the past year when Judge Barnard had produced before him a large number of prisoners who were confined in Eldridge Street jail, or when some proceedings for the discharge of such prisoners before him took place? A. I was

in the room while the prisoners were there, but I was not when they were brought in.

Q. Were you present at the discussion in respect to their discharge?
A. Some parts of it.

Q. Can you relate what Judge Barnard said on that occasion? A. Could I relate it?

Q. Certainly; could you relate it? A. No, sir; my memory is too treacherous to relate what was said; if you will call my attention to any particular thing, probably you can refresh my memory.

Q. What is the matter with your memory? What do you mean by saying that it is treacherous? A. That is, my recollection is not good enough to retain what I would hear you gentlemen probably say in this room this afternoon; probably I would not recollect it a month or two months hence.

Q. How do you recollect any better what might have been said by Judge Barnard when he held Chambers during the year 1871? A. Well, I would recollect if Judge Barnard made use of any such remark as that, I think.

Q. Can you recollect the remarks that Judge Barnard made use of when discharging those prisoners? A. No, sir; I was not there when he discharged those prisoners.

Q. Can you recollect the remarks made use of by Judge Barnard while the subject of their discharge was under discussion? A. I don't know as I could give it word for word; I know that Judge Barnard made some remarks that those prisoners were kept in there—

Q. I am not asking you to state what Judge Barnard said; I simply desire to know whether you can tell? A. Well, sir, I can't say that I can.

Q. Were any remarks then made by Judge Barnard which struck you as being not exactly proper, or decorous, or judicial? A. No, sir.

Q. Nothing was said by him which you thought at all out of the way? A. No, sir.

Q. Have you ever heard Judge Barnard speak about Mrs. Mansfield? A. Not to my recollection.

Q. Don't you recollect of hearing Judge Barnard say something about Mrs. Mansfield, in connection with an injunction order which Judge Brady granted, restraining the publication of certain letters? A. No, sir.

Q. Do you mean to state that you have no recollection on that subject? A. I mean to state that I never heard him say anything about it.

Q. And that you state positively, do you? A. I do state positively.

Re-direct by Judge BARNARD:

Q. Were you in Court at the time Thomas C. Durant was examined as a witness? A. Yes, sir.

Q. 1869? A. A railroad case, wasn't it?

Q. Yes, sir. A. Yes, sir.

Q. In part two, he was examined? A. In part two; that is the way I came to be there; it was in that room.

Q. No other case was on except that one? A. No, sir.

Q. Have you any idea what he testified to? A. No; I have not.

Q. Do you recollect his testifying that General Blair had told him that Judge Barnard had said at the Astor House, that he had run out one set of damn scoundrels from the State, and was going to run out another set? A. There was something of that kind said.

Q. Did he testify to it? A. Well, I wouldn't be sure whether it was him or not. I recollect there was something of that kind said by one of the witnesses.

Q. Did Judge Barnard say anything of that kind? A. No, sir.

Q. In your hearing, and in your presence, Judge Barnard said nothing of that kind? A. No, sir.

Re-cross examination by Mr. PARSONS:

Q. Do you remember on the occasion of the examination of Mr. Durant, to which your attention has been called, or on the occasion of the examination of some other witness in the same proceeding, when the question under discussion was of a release by writs of *habeas corpus* of persons against whom contempt proceedings might be taken, Judge Barnard said that by the statutes, or by a statute, all writs of *habeas corpus* for the next two months must come before him; will you undertake to say that Judge Barnard did not make that statement? A. I will undertake to say that he did not make it in my hearing.

Q. Is that the best answer you can make? A. That is the best answer I can make, and I don't think he could have said it unless I may have possibly been sent out of an errand for a book, for a moment, or something of that kind, and been two or three minutes away from my position; unless it was said during that time; I don't think it could have been said without my hearing it.

Q. Have you such confidence in your treacherous memory as to say positively whether Judge Barnard made that statement? A. No, sir; I say that I didn't hear it, nor I don't recollect its being said.

RICHARD B. HOOPE, a witness called for the defendant, sworn, and examined by Judge BARNARD:

Q. Are you one of the deputy clerks of the Supreme Court? A. Yes, sir.

Q. Where are you stationed? A. In Chambers of the Supreme Court.

Q. How long have you been such clerk? A. Since March, 1870.

Q. Since the 1st of March? A. About the 3d or 4th day—I wouldn't be certain about the date—the forepart of March.

Q. Was it the first Monday? A. Yes, sir; I think it was the first Monday, 1870.

Q. Were you there every day from that time on—up to when? A.

I was there with the exception of one week in August, 1871, up to the present time.

Q. Every day? A. Yes, sir; except Sundays, of course.

Q. You was in the room where Judge Barnard was when he was holding Court? A. Yes, most of the time; there was a part of the time that I would go into the other room to enter up orders that were obliged to be filed by the County Clerk—special orders.

Q. Were you present in Court when Judge Barnard called the calendar? A. Yes, sir.

Q. Did Judge Barnard ever say in your hearing, to anybody, or ever talk in your hearing to anybody, how could he tell whether a woman had committed adultery, or been screwed, by looking at her? A. No, sir.

Q. Was anything of that kind ever said? A. No, sir; never in my hearing.

Q. Do you know a man of the name of Birdseye? A. I have known him by his coming into Court there as a lawyer; I don't know him personally.

Q. Had he any business—any contested motion—before Judge Barnard, from March up to August, that you know of? A. 1871?

Q. Yes, sir. A. No, sir.

Q. Have you looked at the calendars of the Court? A. I looked at them the other day.

Q. Do the calendars show that he had any case there whatever, that was answered? A. No, sir.

Q. Do the calendars show that any trial case was there before Judge Barnard, that was heard by him? A. No, sir.

Cross-examination by Mr. PARSONS:

Q. What calendars have you examined? A. I examined all the calendars of the Judges for the year 1871, from January to December.

Q. What is the name of the Mr. Birdseye of whom you speak? A. I don't know what his first name is; I think he belongs to the firm of Birdseye & Crosby.

Q. Do you know that Birdseye & Crosby had no motion in the Supreme Court Chambers during the months of April, May, and June, 1871, when Judge Barnard was sitting there? A. No contested motion that was answered at that time; he may have had an *ex parte* motion that I knew nothing at all about—that is, a motion that would come up before the calendar was called; that I don't know anything about; there was no motion on the calendar.

Q. Will you undertake to state that Judge Birdseye was not in the Supreme Court Chambers during those months? A. No, sir.

Q. Have you any knowledge on the subject whether he was there or not? A. He didn't come in there as an attorney to argue the motion before Judge Barnard. There is always a great crowd in the Court, and it is impossible to see everybody in the Court

Q. Do you know who are counsel for attorneys who have motions in the Supreme Court, except as you gather it from their appearance, on the hearing of the motion? A. I don't know what you mean by counsel.

Q. Do you know who are retained as counsel for the attorneys whose names appear as attorneys? A. Do you mean those persons who argue the motion?

Q. Yes, sir. A. All I know is what I see in Court, and when parties argue a motion I see them.

Q. Suppose the motion does not come on to be heard, can you tell then who are retained as counsel for the attorneys? A. Not without their names appear on the calendar.

Q. Have you a desk at which you sit? A. Yes, sir; there are two desks there.

Q. Is your desk in Mr. Beamish's room? A. I don't know Mr. Beamish's room; there is a clerk's room.

Q. An office of the Clerk of the Supreme Court, is there not, and an office where Mr. Beamish sits? A. He generally sits in the Court room. What I call special orders, requiring the attorneys themselves to file in the County Clerk's office—those papers were handed up to me, and I entered them in a book, and returned them to Mr. Beamish, and he handed them to the lawyers, and they filed them themselves personally in the County Clerk's office.

Q. Is there not a small room adjoining the Chambers, where Mr. Beamish usually sat? A. No, sir; there is a room there, but he don't generally sit there.

Q. Does he not frequently sit there? A. No, sir.

Q. Do you mean to be positive about it? A. Yes, sir, I do; that is, since I have been there.

Q. Has he not a desk in the small room? A. There is a desk that both of us use, where we keep the minute books of the Judge.

Q. In an adjoining room? A. Yes, sir.

Q. Who sits at that desk—you or he, or both of you? A. We both sit there, off and on, but I sit there most of the time, because it is my business to enter all orders that the Judge signs, in the book.

Q. When you sit at that desk in that room, can you hear what Judge Barnard says when he sits on the Bench? A. Anything that he says aloud?

Q. Yes, sir? A. Yes, sir.

Q. You mean to be perfectly sure about it? A. Yes, sir; anything that he says aloud; what he says to anybody sitting on the Bench with him, any private business, I would not be able to understand.

Q. How far is the door of that room from the Bench where Judge Barnard sits? A. I should judge about ten or twelve feet.

Q. And then there is a door which separates that room? A. There is a door that goes from the little room to the Court room.

Q. And this desk is in the corner of the little room, is it not? A. The door is like that, (indicating,) and the desk is there; I can reach my hand around that way, and I can reach papers, so Mr. Beamish can reach them.

Q. Were you in attendance at Chambers during the past month, or the present month? A. This year?

Q. Yes, sir. A. Yes, sir.

Q. Did Judge Barnard sit at Chambers during February? A. That is, last month.

Q. I asked you as to last month or this month? A. You said during the present month, this month.

Q. Did Judge Barnard sit at Chambers during the past month, February, 1872? A. Yes, sir.

Q. Do you remember hearing what was said by Judge Barnard last month while he sat at Chambers? A. Most of the time, yes, sir; there was one or two days there during the Stokes trial that a great number of people would pass through my room, and when the noise would get too great the door was closed, but other times the door was generally left open.

Q. Were you present when this took place: "Judge Barnard arose one day in February, during the transaction of the morning's business, and deliberately proceeded to scratch himself, remarking as he did so, I am going to scratch; I suppose that will be the 2,561st article of impeachment?" A. I didn't hear Judge Barnard say that.

Mr. CURTIS:

Is that in the testimony?

Mr. PARSONS:

Q. I ask the witness whether he heard it? A. No, sir; I did not.

Q. Are you quite sure about it? A. Yes, sir; you ask me whether I heard it.

Q. I ask you whether you were present when that took place? A. I didn't hear it.

Q. Can you say that that did not take place? A. Not in my hearing; no, I can't say that that did not take place because I didn't hear it.

Q. Are you generally called Dick by the officers and Judges of the Supreme Court? A. I am generally called Dick by the officers, and I am called Mr. Hooper by the Judges.

Q. What does Judge Barnard call you? A. Every time he has addressed me, which has been not more than once or twice, it has been Mr. Hooper.

Q. Were you present on any occasion during February, 1872, when this, or anything like this, took place: "An attorney present was hailed by Judge Barnard, who asked him when he was going to pay that fifteen dollars, and calling to the Clerk of the Court, Judge Barnard said: 'Dick, has he paid us that fifteen dollars yet?'" A. I did not hear it.

Mr. CURTIS:

Is this a proper course of inquiry? These things have not been testified to as having been said by Judge Barnard.

Mr. HILL:

He is trying to prove them now.

Q. Were you present when this, or anything like this, took place? I mean during February, 1872: "The same attorney appeared in a case connected with a bond, a copy of which the opposing attorney denied having received; the copy was tendered in Court; the Judge held it insufficient, and allowed \$10 costs, saying he allowed it as a matter of course, to the successful party, whom he requested to pay five dollars of the amount to Dick, adding, 'That seems the only likely way of getting any of the \$15 that fellow owes us.'" A. I didn't hear it.

Q. Now, will you state positively that you did not hear anything like that said by Judge Barnard during February, 1872? A. That is last month?

Q. Yes, sir, last month. A. Yes, sir.

Q. Who is it whom Judge Barnard addresses as Dick, when he sits in Chambers? A. I don't know of any one; I have heard him once in a while after the Court was adjourned, in coming down, he would call Mr. Beamish Dick; that is the only one.

Q. Mr. Beamish is Dick, is he? A. He is the only one I know; I have heard him come out in the small room and say, "Dick" so and so.

By Mr. PRINCE:

Q. Just before you were called in, did you not hear Judge Barnard say to Mr. Buchanan, as he went out, "Send in Dick," meaning you? A. No, sir; Mr. Buchanan met me out there in the bar room, and says "Dick, come." Says I, "Do you mean me." Says he, "Yes, come right in."

Adjourned to 7:30 P. M.

MARCH 25th, 1872.

The Committee met at 7:30 P. M.

RICHARD C. BEAMISH, called by the Committee, sworn. Examined by Judge BARNARD.

Q. Are you one of the clerks of the Supreme Court? A. I am, sir, and have been since the year 1855.

Q. Of what branch of that Court? A. The Supreme Court Chambers.

Q. Where were you in the year 1871? A. I was in the Supreme Court Chambers.

Q. During the whole year? A. Yes, sir, with the exception of probably six weeks, that I was sick.

Q. Six weeks in what months? A. In the months of April and May.

Q. Did you come to Chambers in June? A. About the second week in June.

Q. How long did you continue there? A. I continued there since, up to the present time.

Q. Every day? A. Yes, sir.

Q. Do you recollect Judge Barnard holding Court from June on? A. I do, sir.

Q. Where were you personally while Judge Barnard was on the Bench? A. In the Court-room.

Q. In which Court-room? A. In the Supreme Court Chambers.

Q. Did you ever hear, or did Judge Barnard, to your knowledge, say to any person in the Court-room, whether the plaintiff or defendant, or a lawyer, "I cannot tell, by looking, whether that woman has committed adultery, or whether she has been screwing?" A. I never heard of such a thing.

Q. Did he ever say any such thing in your hearing? A. He never did, sir.

Q. Did you ever hear of his saying it? A. No, sir; I never heard such a remark from the Judge.

A. Did you ever hear it spoken of by any one? A. I never did.

Q. Was it possible, when you were in the Court, for him to have said anything in an audible tone of voice without your hearing it? A. I do not think it was, without my hearing it.

By Mr. PARSONS:

Q. Have you an office adjoining the Chambers? A. I have, sir.

Q. With a desk there? A. A desk adjoining the Court-room.

Q. Is there a door between the Chambers room and the room where your desk is? A. There is, sir.

Q. Who delivers to you the papers which come from Judge Barnard to you? A. The officer attached to the Chambers.

Q. Are you not sometimes present in the Chambers room? A. I am present pretty much all the time in the Supreme Court Chambers.

Q. Are you not sometimes present in the Chambers room itself, where the Judge who holds the Chambers sits? A. Pretty much all the time.

Q. Were you never there when Judge Barnard made a remark which caused laughter in the Court-room? A. I do not know that I ever heard any case where it caused laughter at all.

Q. Do you mean to have it understood that you were never present in Chambers when Judge Barnard made a remark that caused laughter through the Court-room? A. I do, sir.

By Mr. CURTIS:

Q. Where is your ordinary seat during the session of the Judge at Chambers? A. Always at the table in the Supreme Court itself.

Q. That is your ordinary place? A. Yes, sir.

Q. The place where you are bound to be? A. Yes, sir.

By Mr. PARSONS:

Q. Have you heard Judge Barnard, when sitting at Chambers, during the month of February, 1872, make jesting remarks in reference to the Judiciary Committee and the charges pending against him, speaking about this transaction and that transaction as furnishing cause for such and such a charge of impeachment against him? A. I never did, sir.

Q. You are quite sure about it? A. I am, sir.

THOMAS G. SHEARMAN, recalled. Examined by Mr. CURTIS:

Q. Were you present in the Court at some hearing before Judge Barnard in the litigation of Fisk *vs.* The Union Pacific Railroad Company, when Thomas Durant was on the stand as a witness? A. Yes, sir.

Q. Did you hear Mr. Durant testify that he had been told by some one that Judge Barnard had, out of Court, made the remark that he had driven one set of men out of New York, and wanted to drive out another, or something to that effect? A. I think I do recollect Mr. Durant saying something of the kind.

Q. As part of his evidence given on that occasion, do you mean? A. Yes, sir.

Q. Did you hear Judge Barnard make any such remark as that from the Bench? A. I did not.

Q. You have already testified that you were present at the election of the Albany and Susquehanna Railway Directors in Albany? A. I was.

Q. Did you hear any remark made by David Dudley Field, your partner, to Mr. Ramsey, on that occasion, or anything pass between them? A. I did not hear anything pass between them at all.

Q. Where were you during that time? A. I was passing in and out between the different rooms; but at the time Mr. Ramsey was nominally placed under arrest, I was in the room with Mr. Ramsey; that is to say, I was called immediately after the arrest had taken place.

Q. Can you tell where Mr. Field was at that time? A. He was in another room; the election took place in the central room, and there the matter about the bail bond was discussed in that room; Mr. Field was in what I should call the north room, which was occupied for the purposes of the election; the south room was occupied for the purposes of the stockholders' meeting.

Q. During the time when the arrangements were making for the execution of the bail bond for Mr. Ramsey, did you at any time see Mr. Field in the doorway between the two rooms, leaning against the door-post, with his arms in his waistcoat in this way (thumbs stuck in the arm-holes of his vest)? A. No, sir, I did not; it was a very unusual position for Mr. Field, and it would require very strong evidence, and indeed his own admission, to make me believe he ever stood in

that position ; because Mr. Field is a gentleman remarkable punctilious about his manner.

Q. Did you on that occasion hear Mr. Field say anything, or did he say anything to you, or to others, to indicate a triumphant gratification at the fact that Mr. Ramsey had been arrested? A. Not in the slightest degree ; on the contrary, everything which he said to me indicated some degree of annoyance that the arrest had taken place there, and an anxiety that everything should be arranged so that Mr. Ramsey should be entirely uninterrupted and free in his movements ; and I may say here that Mr. Field and myself had previously exchanged a few words on the subject of the possibility of the arrest taking place during the time of the election ; that we both depreciated it very much, and consulted a little as to whether any measures could be taken to avoid the possibility of such an occurrence ; and with a view to avoid the possibility, we caused the order of arrest to be placed in the hands of the Sheriff at the very earliest moment at which by any possibility it could be got into his hand ; and the only reason we did not positively tell him not to interfere with any of the gentlemen named in the order of arrest during the time of the election was, that under the well-known decisions on that subject, we saw good reason to fear that we would thereby waive the official liability of the Sheriff, in case of his failure to make the arrest ; every lawyer knows those decisions, and is perfectly familiar with the line of cases, so that I do not need to cite them.

By Mr. PARSONS :

Q. Are you quite sure, sir, that you were present at the examination of Mr. Thomas C. Durant? A. Yes, sir ; I recall as well as can be seeing Mr. Durant raise his eyes to heaven every time he answered a question ; I was very much struck with the peculiarity.

Q. Are you quite sure, sir, that you heard him make the statement to the effect that some one had said Judge Barnard had stated he had driven one set of scoundrels out of the State and wanted to drive out another? A. I am not so absolutely certain about that ; I am sure that if those words were uttered on that occasion they were given by Mr. Durant, in his testimony.

Q. The question is, are you quite sure that you were present on that occasion, when Mr. Durant stated anything to that effect in his testimony? A. No, I am not quite sure as to that, because I am not quite sure that Mr. Durant uttered these words, or that any one uttered them.

Q. When you learned that in fact there was danger that Mr. Ramsey and others would be arrested, actually, during the election, you being the plaintiff's attorney, did you take any measures then to prevent it? A. I have already said that I could not with safety take any measures to prevent that action ; I did take the very promptest measures to secure Mr. Ramsey's release before the formalities of giving bail were completed ; that was the utmost which I could safely do.

By Mr. STICKNEY :

Q. Were you present when the Sheriff first took Mr. Ramsey under his charge—when he first arrested him? A. Not at the very moment, but I was sent for on the instant of its happening, and could not have been more than one minute in reaching the place.

Q. Do you know of your personal knowledge that you were sent for on the instant of his arrest? A. No, sir; I cannot, of course, know that of my own knowledge; I inferred that from what was said by Mr. Ramsey's counsel and his friends, of whom there was a number.

Q. What did they say? A. That is more than I can recollect now.

Q. You knew that Mr. Ramsey was a well-known citizen of Albany, did you not? A. Yes, sir.

Q. And had lived there for many years? A. That he had lived there for many years.

Q. You knew Mr. Henry Smith was a well-known citizen of Albany? A. Yes, sir.

Q. And that he had lived there for some years? A. Yes, sir.

Q. And the same of Mr. Pruyn? A. Mr. Pruyn had lived there many years.

Q. Did you know Mr. Phelps? A. I knew very little about Mr. Phelps.

Q. Suppose you had given the Sheriff directions not to make the arrest until after the election—not to serve the papers at all until after the election. Had you any apprehension that these gentlemen would abscond from New York? A. I had very decided apprehensions that Mr. Ramsey and Mr. Pruyn would have gone, and that Mr. Phelps would. I don't think that Mr. Smith would.

Q. And that you would be unable to secure their arrest, if instructions were given to the Sheriff not to arrest them until after the election? A. I thought there was a very decided risk about the matter; Mr. Pruyn, in fact, never having appeared, and indeed, he did not appear even at the time of the election. Mr. Ramsey had concealed himself for some days, and I thought it extremely probable that if he learned in any way that an order of arrest was out for him, he might again think it expedient to conceal himself.

Q. Suppose you had delivered the order of arrest to the Sheriff immediately after the election, would not they have been on hand at that time? A. No; it would be a risk, I think.

Q. And you really felt that in case you delayed giving the order of arrest to the Sheriff until just after the election was over that Mr. Ramsey might run away from the State, or from Albany? A. I certainly did.

Q. Were you present in the room with Mr. Ramsey while he was in charge of the Sheriff. A. I did not understand Mr. Ramsey to be in charge of the Sheriff for as much as three minutes; I did not spend more than five minutes in the room.

Q. Then it is only as to that five minutes that you can testify that Mr. David Dudley Field did not come and address some remarks to him? A. No, for a longer time; because I then passed out into the

room where Mr. David Dudley Field was, and I know that he could not have addressed any remark to him without my hearing it after that time, until I went into the furthest room, returning to the room where Mr. Ramsey was about 12 o'clock.

Q. After you left the President's room, where Mr. Ramsey was, where did you go? Was it into the room where the voting was going on? A. In the room in which the voting did afterwards take place; there was no voting going on then; the room where the actual election was held.

Q. Was that the room in which you were? A. When?

Q. After you left the President's room, where Mr. Ramsey was with the Sheriff. A. That was the room into which I went; I only stayed there a few minutes.

Q. Where did you go then? A. Back through the President's room into the room where the stockholders' meeting was held.

Q. How long did you stay there? A. Only about a minute.

Q. Between the time when you left Ramsey and the time when you went back again into the room where the stockholders' meeting had been held, how long had elapsed? A. Altogether the whole affair occupied from seven to ten minutes, including the time in which I first heard of Mr. Ramsey's arrest, and the time occupied by me in seeing that his bail was accepted, and the time occupied in passing through the rooms and returning to the Treasurer's room, where Mr. Field was, and where I afterwards remained.

Q. Then you were absent part of the time from both the President's room, where Mr. Ramsey was, and the Treasurer's room, where Mr. Field was? A. A very small part of the time.

Q. Can you testify that Mr. Field made no such remark during the interval? A. Of course not.

Q. Can you testify, positively, that Mr. Field did not have this look of exultation in his face while looking at Mr. Ramsey? A. I cannot tell positively what look Mr. Field might have had during the day.

Q. Mr. Field testifies that he might possibly have had a look of exultation on his face. A. I do not think he meant that he had a look of exultation when he saw Mr. Ramsey arrested.

Q. You can only testify with positiveness as to the period of time that you were with Mr. Field? A. As to the time I was either with Mr. Field or Mr. Ramsey.

Q. And there were times when you were not in company with either of them? A. A very short space of time. Since I have been asked on this question, I can say that I have heard Mr. Field address Mr. Ramsey in polite terms usually—I might almost say universally, in meeting him. Of course upon that day, as upon any other day, he may have said: "How do you do," or "how are you," or some such remark as that; I have heard him make the remark quite a number of times to Mr. Ramsey, and have heard Mr. Ramsey respond; these remarks were always exchanged with the most perfect civility on both sides, and in precisely the same manner in which gentlemen usually address each other, or make such inquiries.

Q. Still, I suppose it is possible that Mr. Field may have used an incautious expression? A. It is possible that he might have used an incautious expression; but that he should have used one which was both incautious and ungentlemanly, and expressive of a spirit of improper exultation over his enemy, I do not think possible.

Q. That is, you do not believe it happened? A. I do not certainly believe it happened, and it would require the strongest accumulated evidence to make me believe it; I have known Mr. Field for many years, and he never did such a thing, and I believe that he would not do it.

Q. Is that conviction on your part due to your opinion of Mr. Field's character? A. It is due to my experience.

Adjourned to ten o'clock to-morrow.

In the matter of charges preferred against Hon. George G. Barnard, Justice of the Supreme Court. Before Judiciary Committee of the Assembly.

NEW YORK, March 26th, 1872.

D. P. INGRAHAM, sworn.

The official stenographer's report of the testimony of Mr. Strahan having been read to the witness, he testified as follows: I would like to say in reference to that testimony, I never had a conversation with Judge Sutherland on the subject, and I never knew of an application being made for that injunction until I read it in the newspaper as having been granted by Judge Barnard; that it is untrue that I ever went away for the purpose of avoiding any business.

Mr STRAHAN:

If you will allow me to suggest, nobody says so.

WITNESS:

Some one says so.

Mr. STRAHAN:

No, sir; it does not say so at all in his testimony; there is no insinuation of the kind.

WITNESS:

I won't put it in that way, then. I will say, then, that I was at that time at Saratoga, previous to the 5th; that I returned to this city for a day, went to the private room of the Judges, the private chambers in the County Court House, and got my papers and letters that were there, and did not return there again; went to my home, and left there

either the next day or day after, within a day or two, for Massachusetts; that there was no secret in my going away; that there was no concealment in my going away, but that I am not in the habit of telling my servants where I am going; and that I never did anything, and could not have done anything, to avoid an application of this kind, because I did not know that one was to be made, and that the statement which is introduced there by way of conversation that I said I would devote the remaining two years of my term to persecute anybody, is not so. I did not say any such thing. I never thought of such a thing.

Mr. STRAHAN :

Mr. Strahan swears that Judge Sutherland told him; it was not that it was a fact, or anything of the kind.

WITNESS :

Judge Sutherland could not have so understood it; in fact, he never saw me on the subject, and I could not have said so, because I did not know that it was going to be. I am not in the habit of avoiding or shirking business, nor seeking it; I only want to relieve myself of the charges that I saw in the *Times*, that I had said many things which certainly were not true, and I had never thought of and never imagined for a moment. Will you permit me, in regard to my testimony the other day, to make an addition to it?

Mr. PRINCE :

Certainly, sir.

WITNESS :

In regard to the application in the case of Fields, the application that was made to me originally was for a judgment upon the report of a Referee, and was for alimony. I remembered that afterwards; after I went from here, I thought it over again, and it came back to my mind very distinctly then, and I stated it. On the application for alimony they offered an affidavit of Mr. Fields, and it was objected to, and I took the papers for the purpose of seeing whether that should be allowed or not, among other things. If it was not to be admitted, then I should have granted the judgment, and I came to the conclusion it was proper to admit the affidavit of Mr. Fields, and I so stated when I returned the papers to them. Mr. Parsons said I did it in writing. The papers were returned with permission to use that affidavit on the part of the defendant, and with the understanding that the plaintiff was to be allowed to furnish affidavits on her part to contradict that statement. That is all I wanted to say on that subject. My testimony was rather uncertain and confused, I think, before about that, because I did not recollect particularly the points.

By Judge BARNARD :

Q. All this was in 1868? A. 1868, sir.

By Mr. PARSONS:

Q. Are you aware of a rule, or agreement, or understanding on the part of the Judges of this district in reference to applications for *ex parte* orders? A. No, sir; not particularly in reference to *ex parte* orders. There was a rule made by the Judges when Judge Brady came into office; it had been talked of previously, and when Judge Brady came into office he urged it to be made a rule of Court, and there was a rule drawn up and signed. I signed it; Judge Brady signed it; I think all the Judges signed it; I don't know whether Judge Barnard did or not; I think all the other Judges did, at any rate; I am not certain whether Judge Barnard signed it; the other Judges signed it, and the rule was a general one, that Judges not assigned to Chambers should not attend to the Chamber business, I think.

Q. Could not grant Chamber orders? A. Should not attend to Chamber business unless there was a special reason, some special necessity, or the Judge was absent, or something of that kind.

• Q. Can you remember the date when that rule was signed by the Judges? A. No, sir; I think it was shortly after Judge Brady came into office, which was January, 1868.

By Mr. BARNARD:

Q. Oh, no. A. 1870.

By Mr. PARSONS:

Q. How shortly after Judge Brady's term began? A. Very shortly after. The rule was entered on the minutes, and it will show for itself.

Q. Will you state whether any of the Judges, and if so, which, have declined to observe that rule since it was passed? A. That I cannot say.

Q. Have you no knowledge on the subject? A. No, sir; not of any declining on the part of the Judges to observe it; I know of no declaration on the part of the Judges that they would not observe it.

Q. That is not what I desire to know. I desire to know what has been the practice among the judges. A. I think Judge Cardozo did not understand the rule as extensively as some of the other Judges did.

Q. Is your recollection clear whether Judge Barnard did or did not sign the rule? A. No, sir.

Q. Do you know what Judge Barnard's practice has been, whether he has or has not observed that rule practically? A. I do not. I suppose he has, as I have at times signed papers which might be in violation of the rule, because the Judge was absent. When the Judge at Chambers would be gone, if I was in the private room, and they wanted an order—an order for time, or an attachment, or anything of that kind—I would grant it, having the power to do it, rather than to allow the parties to go and hunt up the Judge assigned, at Chambers, at his house or elsewhere; but when the Judge was at chambers I always made it a rule not to interfere.

By Mr. CURTIS:

Q. Unless such a rule is supported by statute provision making it unlawful for a Judge to sign any order when not sitting at Chambers is it not in practice very difficult to execute such a rule as you have referred to? A. It is, very; almost impossible; but independent of that, I have supposed that rule to be erroneous, and I think so now, because the Code provides that when the Judges are not engaged in holding a branch of the Court they shall attend to Chamber business, and after the rule was made I have often spoken of it as being a very doubtful matter whether they had a right to make such a rule; I have that doubt now.

By Mr. BARNARD:

Q. Have you signed orders since you have been Justice of the Supreme Court out of the county? A. I have not.

Q. You have power to sign anywhere in the State, haven't you? A. Stop a moment. Yes, I have; I signed them when I was holding Court at Albany, and when I have been holding Court elsewhere; I have signed orders repeatedly.

Q. When you were not holding Court? A. I don't remember, sir; I should not have hesitated—a proper order I should not have hesitated signing; an order for time to answer or for an attachment, or anything of that kind, that did not require to be done in Court.

Q. A Judge has power to sign anywhere in the State, hasn't he? A. I suppose so.

Q. Let me refresh your memory, if I can, in regard to the rule. Do you recollect that Judge Cardozo said that he should not be bound by it anyhow after he had signed it? A. No; I think that Judge Cardozo thought it did not apply to the opening of streets, and we did, and I do not think he observed it in regard to that at all.

Q. Do you know of your own knowledge, or do you know from reports made to you by the Clerk or officers of the Court, that room 13 was constantly going with the transaction of business and hearing of motions outside of the Court? A. I don't know anything about room 13, of my own knowledge.

Q. You know as much as I do. A. I know nothing about it; I have never been there when there has been any business done in it.

Q. Do you know that Judge Brady has in the past year appointed two or three Receivers of Insurance Companies and others when he was sitting at Circuit, when Judge Barnard was sitting at Chambers? A. I don't know that, sir. The papers themselves will prove that. I never heard it—yes, I did; I heard it from Judge Brady, that he appointed one Receiver, and he told me he did it after the Court adjourned, and they told him it was a matter of absolute necessity it should be done that day—one case, that is all I know of; I think that was the *Etna*; I know I was holding Chambers at the time when he saw me the next day, and mentioned it to me; I was very glad he did it.

Q. I think he appointed three, if I recollect right.

By Mr. CURTIS :

Q. Do you not understand that an order signed by a Judge of the Supreme Court in this county, to take effect in this county, takes effect as soon as it is signed? A. Before service—notice?

Q. Before being filed in the County Clerk's office? A. Yes, sir; I suppose it does before being filed, but I don't think it does before notice to the other party so as to affect them, excepting in certain cases, where the subsequent order of confirmation relates back to the original order, as it would in the case of a Receivership, or in the case of an injunction.

Q. The point of my inquiry was, whether it is necessary to the validity and operation of the order, that it should be filed in the County Clerk's office before it can take effect? A. I think not; I think it is necessary that notice should be given to the other side first.

CLARK BELL, called on behalf of the defendant, sworn, and examined by Mr. Curtis :

Q. Are you a counsellor at law in this city? A. I am.

Q. Were you at one time counsel of the Union Pacific Railroad Company at the time when a suit of James Fisk, Jr., against that Company was in progress? A. I was.

Q. Will you state briefly what some of the preliminary proceedings were—the first proceedings in that action? A. The summons and complaint is dated the 2d of July, 1868, and the first order in the case was the 3d of July, 1868.

Q. What order was that? A. An order to show cause why an injunction should not issue restraining the Company from paying any dividends, or dividing any property among its stockholders, and restraining the Company from delivering to the Credit Mobilier of America, or to any other persons for its account, any grants of land or bonds of the United States, issued to it by the Government, under an act of Congress; and restraining the Credit Mobilier of America and its officers from paying any dividends, or making any division of moneys and profits among themselves.

Q. What took place on the return of that order? A. Do you wish these answers to be in detail about the whole history of the case, or general?

Q. I only wish you briefly to make answers to the questions that I ask so as to give a sufficient detail of the various steps in the progress of the case, without going into great minutiae. A. The next order granted after the result of the intermediate proceedings, was an order granted by Mr. Justice Cardozo on the 7th of July, 1868, which restrains the defendants from removing, or allowing to be removed from the State, any of its books, papers, money or property, or of the Credit Mobilier of America, until a further order of the Court.

Q. And what followed then? A. Proceedings to obtain the evidence of members of the Board, the Directors of the Company, and its clerks and employees.

Q. Proceedings promoted by whom? A. By the plaintiff's attorney in the action; an order to compel their appearance before a Referee, and attachments for not appearing; various orders and attachments against various members of the Board and its clerks.

Q. Was there more than one attachment in any instance issued? A. An order for an attachment would include several names.

Q. Was there a repetition of the attachment in any instance? A. Well, on the 22d of July an order was granted—

Q. By what Judge? A. By Judge Barnard, directing that Sidney Dillon, Benjamin F. Ham and Thomas C. Durant should appear before one of the Judges of the Supreme Court at Chambers to make deposition on the plaintiff's behalf on the motion for an injunction, and they not having appeared, it was ordered that unless they attend before Anasa A. Redfield, a Referee appointed to take depositions, at ten o'clock, an attachment should issue against them, returnable the next day, bailable in ten thousand dollars.

Q. Any further proceedings under those attachments? A. Well, attempts to get service of subpoena and failures, and then an order on the 24th of July, 1868, an order by Mr. Justice Barnard, that an attachment issue against Durant and Dillon and Ham, to answer for contempt in disobeying the subpoena and order of this Court, a bailable order.

Q. Did those parties obey, or did they avoid the giving of testimony according to the subpoena and the orders of the Court? A. The proof is in the case, the evidence of Mr. Field's clerks and the report of the Referee, that they had been subpoenaed and did not appear, and the orders were granted upon these affidavits and reports.

Q. Following those proceedings for contempt for not obeying orders, what took place thereafter? A. The next step on the part of the defendants was a petition to remove the cause from the State Court into the Circuit Court of the United States, under the act of Congress of July 27th, 1868.

Q. Presented to what Judge? A. Prepared and sworn to on the 30th of July, 1868, and presented to Mr. Justice Cardozo on the 31st of July, 1868, who made an order that day to show cause on the first Monday of August, then next, why the petition should not be there filed and the prayer granted, and why the petitioners should not have the relief prayed for, with a stay of proceedings. Then, on the 4th of August, Mr. Justice Cardozo modified that stay so far as to permit the plaintiff to proceed to obtain compulsorily the depositions of the witnesses to enable him to resist the motion to be made upon said order, and for that purpose to proceed under the orders of Referees then before granted, and to enforce any attachment then before issued.

By Mr. TILDEN:

Q. What was the return day of the first order of Judge Cardozo? A. The first Monday of August.

Q. The order to show cause? A. Yes, sir.

By Mr. CURTIS:

Q. On the first Monday of August what occurred under that order to show cause? A. On the 6th day of August Mr. Justice Barnard made an order in reference to the petition.

Q. Do you mean that the hearing came on before Judge Barnard? A. He made this order on the 6th day of August, that all proceedings—on Mr. Tracy's motion—in the action, including the proceedings for contempt upon the order heretofore granted, and all pending motions, be stayed and adjourned until after the decision of the Court upon such petition for the removal of the cause.

Q. That was granted upon the application of Mr. Tracy, counsel for the defendants, was it? A. It reads: "Now, on motion of Mr. Charles Tracy, attorney for the defendants, it is ordered" On the 8th Mr. Justice Barnard modified that order by an order—modified it so as to permit the plaintiff to proceed and obtain compulsorily the depositions of witnesses to enable the plaintiff to resist the motion to be made for the removal of the cause to the Circuit Court, and to proceed under orders of reference, and to enforce any attachments then before issued.

By Mr. TILDEN:

Q. Was that *ex parte*? A. It did not purport to be issued by any person. It was probably an *ex parte* order; undoubtedly an *ex parte* order.

By Mr. CURTIS:

Q. What followed that? A. Proceedings under these orders of reference of various kinds, and attachments and motions to discharge attachments of different Directors until the 8th of September. Mr. Justice Barnard made an order on his own motion, and on account of his own engagements in the morning, and on account of his intended absence during the month of September, he adjourned the whole matter over until the first Monday of October, with a stay of proceedings in the meanwhile to continue.

By Mr. PARSONS:

Q. On whose application was that? A. His own; on his own motion.

By Mr. CURTIS:

Q. Then when that period had expired, what occurred? A. Attachments and alias attachments were issued during this intervening time to bring witnesses in, &c., and it was adjourned from time to time, and finally, on the 10th of March, 1869, Mr. Justice Barnard made a decision upon the whole question of the petition, "and the prayer of the petition be and the same is hereby denied, and that all orders heretofore granted in this cause staying the proceedings of the plaintiff herein be vacated, and this order is granted without prejudice to a new application for the removal of this action to the Circuit

Court of the United States, to be made before the same Justice before whom this motion was made, and upon the same papers, with only such amendments as may be necessary to remove the technical defects of the petition upon which this motion was made."

Q. When was that order made? A. March 10, 1869. There is a written opinion filed. (The opinion of Judge Barnard on the motion to remove the cause to the United States Circuit Court, printed at page 80 of the papers on the removal of that case, some of the proceedings in which have already been made Exhibits, is introduced in evidence by the counsel for the Bar Association, and marked Charge 9, L1.)

By Mr. TILDEN :

Q. When is that dated? A. It is not dated, but it is filed on the 4th of March; filed before the order was made; filed in the Clerk's office on the 4th of March, 1869.

By Mr. PRINCE :

Q. 1869? A. Yes, sir.

Q. It is printed 1860 here? A. 1869 is right.

By Mr. TILDEN :

Q. Were you personally present on any of these occasions to which you refer, or do you derive your information from the papers? A. I derive my information, so far as I have now stated, from the papers.

Mr. CURTIS :

I was coming presently to develop the point when he came into the matter.

Mr. TILDEN :

I will ask this one question :

Q. Were you personally present on the return day of the order to show cause granted by Judge Cardozo? A. No, sir; I was not.

By Mr. CURTIS :

Q. After Judge Barnard had filed an opinion denying the motion, denying the application to remove the cause, or to treat the cause as removed, what was the next proceeding in the Court—in the State Court? A. An injunction granted by Mr. Justice Barnard, dated March 9th, 1869, upon the supplemental complaint and other papers, commanding the defendants not to hold any election of officers or Directors, or to receive any votes until the right of the plaintiff to the stock was determined in the action.

Q. When and where was that injunction served? A. It was served at a meeting of the stockholders on the 10th day of March, at the office of the Company, No. 20 Nassau street, in this city, on various members of the Board, myself and other stockholders who were present attending the meeting.

Q. Now, allow me to go back and to ask at what period in those pro-

ceedings you began personally to take a part in the matter as counsel? A. I sailed for Europe on the 13th of June, I think.

Q. Which year? A. 1868; and was absent until the early days of October, and of course took no personal part in the proceedings while I was absent, but immediately I returned my relations with the Company—at that time continuous; I cannot state, but I think immediately I returned I was consulted about it; everything that occurred after—after, I would say, the first day of October, but it was adjourned, and held along over; it was not decided until the succeeding March.

Q. From the time of your return you were cognizant of the policy which the Company saw fit to adopt in reference to the proceedings in the State Court, were you not? A. Certainly.

Q. Now, will you say what determination the Directors and officers of that Company came to in regard to the proceedings in the State Court? A. The service of the injunction was on the 10th of March, 1869.

Q. I speak now of previous to the service of the injunction. A. There was scarcely anything done; in the succeeding March was the first of anything of any very great importance that I recollect. Injunctions were then served forbidding us to hold an election.

Q. Previous to that time, had the Company made any efforts or application to procure a modification or dissolution of any order that Judge Barnard had made? A. No; because the Company had applied for the removal of the cause into the Circuit Court of the United States, and the motion was pending before Mr. Justice Barnard to decide whether or not it was a removal, and stays had been granted in every respect except attachments or taking depositions of witnesses before Referees, which were rather unimportant proceedings in some respects, and everything waited for this decision. If the petition was held to be a removal, that ended the jurisdiction of the State Court, and we all waited for that, and that was decided, as I say, not until the succeeding March.

Q. Now, we will come to the injunction served at the time of the election. Was that injunction submitted to? A. I was acting as Secretary of the stockholders meeting at the moment of the service. It was the annual meeting of the stockholders for the election of Directors for the Union Pacific Railroad Company. The plaintiff's attorney claimed that we had disregarded the injunction; we claim that we had voted, actually voted our stock at the moment of the injunction, and the tellers made their certificate.

By Mr. TILDEN:

Q. Before the injunction was served? A. Well, the tellers, I believe—

Q. I mean that you had voted? A. We claimed that the votes had been cast before the injunction was served, and the tellers did make their certificates, on the advice of counsel on our side, that an election had been held legally.

By Mr. CURTIS:

Q. The Company went on then and completed the election, did they? A. It was a meeting of stockholders, Mr. Curtis.

Q. Well, that is the Company. A. There was no proceedings taken in the stockholders' meeting after the injunction, except, I think, to adjourn, one or two motions, but the stockholders did make their report of an election.

Q. After the injunction had been served? A. The tellers did, certainly; we voted before the injunction was served, on our side.

Q. What took place then, if anything, in reference to the action of the State Court and Supreme Court of the State at that meeting? A. The next proceeding was that all our Directors were arrested for a violation of this injunction.

Q. What determination did the Directors come to in regard to the action of the State Court? A. We decided to renew the application to remove the cause to the Circuit Court of the United States.

Q. To renew it to whom? A. We submitted a petition for a removal—the Company, I should say, and certain of the defendants. I am not stating the next proceeding; I am answering your question. On the 27th of March, 1869, we laid before a Justice of the Supreme Court of this State a petition for a removal of this cause from the State Court into the Circuit Court of the United States, on behalf of the Credit Mobilier of America and certain of the defendants—those of the defendants who had been served, under the act of Congress, with the usual bond in such cases, and obtained an order from Mr. Justice Rosencranz, dated on that day, March 27th, 1869, an order in pursuance of said act of Congress, that said petition be filed, the said bond be accepted, and good and sufficient security by said act required, and that the prayer of the petition be granted, and that the suit be removed to the said Circuit Court of the United States for the Southern District of New York, and that this Court proceed no further in the said suit, and that all further proceedings in the action on the part of the plaintiff be stayed.

By Mr. TILDEN:

Q. I want you to look at the petition, and look at the order, and see if you are not mistaken in supposing that the Company were parties to that petition; whether it was not the Credit Mobilier of America, and certain individuals? A. Yes, sir; it was the Credit Mobilier of America, and certain individuals.

Q. You don't find the Union Pacific Railroad Company in that order at all? A. No, sir; that is an order on behalf of the Credit Mobilier of America, and certain individuals. The Company had made and filed a petition previously, as I have stated earlier in my evidence.

By Mr. PARSONS:

Q. The one which was the basis of Judge Barnard's decision? A. Yes, sir.

By Mr. TILDEN :

Q. Will you state whether the company were advised by counsel that the former petition and bond were adequate to effect the removal of the cause, and that such removal took place by the operation of law on the 3d of August, 1868? A. It was the opinion of the counsel on our side that the cause was removed the moment that the first petition was filed. We always held to that view. The Company were so advised. To this petition there was a subsequent annexation of such names as had been subsequently served, and had not united in the previous petition.

By Mr. CURTIS :

Q. Under that advice to act upon the assumption that the cause had been removed, did or not the Company disregard all orders of the State Court; did they not decide to disregard all orders of the State Court on that theory of the case? A. The counsel on our side of the case being of the opinion that the cause was removed, they thought any subsequent action of the State Court was wholly and absolutely void; that that Court had no jurisdiction, and therefore we did not consider ourselves bound by its orders.

Q. Did you yourself concur in giving that advice, that no attention should be paid to the action of the State Court; did you yourself concur in that policy, advising the Company not to recognize or regard any action of the State Court thereafter? A. It was my fixed determination to resist, on behalf of my clients, all these orders, because I considered that the cause had been removed, and that the orders were not obligatory, but of course I protected my clients in the contempt proceedings as far as I could; and took every step that I was able to take to prevent them being adjudged guilty, technically, of contempt.

Q. Was it your opinion that the resistance to the action of the State Court should be carried on in that Court, or carried on in disregard to that Court? A. If you want to get at my private opinion as to what would be the best policy of the defense.

Q. That is what I want to get at, the opinion you entertained at the time; not any opinion that you entertain now. A. Personally I should have preferred to carry on the controversy in the State Court; but when I came into the case originally the petition had been filed, and the policy of the case had been settled. Mr. Tracy had filed this petition for the removal in July—

Q. Your views as to what was the best policy were precluded, were they not, by the senior counsel? A. I considered that line of defense had been established before I returned from abroad.

Q. Did you make any efforts to have a different course taken, and to have the merits of the case litigated, or did you give any advice of that nature? A. Do you mean as between counsel? We had a large array of counsel.

Q. I meant did you make any efforts, or did you give any advice to your clients to litigate the merits in the State Court, and not carry on this contest between two Courts. A. I may have stated my perfect

confidence in defending this action in the State Court. I have no doubt whatever that if we had gone on the merits in the State Court in this case, we would have blown them right out of Court, because there was not anything in the case, as I understand it; but another plan had been decided upon, and that was to remove it from the State Court, and this battle was carried out on that line.

Q. Did you not ask your clients to permit you to make the effort?

A. No; I don't think I did that. I didn't think I sought to change it; it was one of those cases that we could not change our line; we had established our line to go on this petition for a removal.

Q. Did you ask your clients to permit you to make an application of any kind to Judge Barnard, on any occasion, to modify any injunction or proceeding? A. It was our theory, that if we affirmatively made any application before the Supreme Court, or asked for any orders, that that prejudiced us, and we adhered to that line of resistance; but, on one occasion, an order of injunction had been granted by Mr. Justice Barnard, restraining our Treasurer from paying any money out: that is all; and we had some ten thousand men employed at the time—I speak of the Union Pacific Railroad Company—and the disbursements were very large; obedience to such an order as that would have been—well, it would have been impossible—it would have stopped the whole work; the counsel were called together upon that to decide what had better be done, and Mr. Cisco, the Treasurer, refused to take the position, that he would disregard that injunction; he said he would obey it; upon that occasion, I did desire that an application be made to Mr. Justice Barnard to modify the order, and I insisted upon it, against the remonstrances of some—not of the counsel—but of the Directors and others; but I went to Judge Barnard.

Q. How did those gentlemen treat the proposition? A. Well, I think that it is proper to state that certain of the Directors thought that any application to Judge Barnard would be entirely futile.

Q. Did they assign any reason why it would be futile? A. I think that there were members of our direction who considered that Judge Barnard was hostile to us and the enterprise, and friendly to Fisk in the matter—certain of the stockholders had that view.

Q. What did they say to you, in reference to that proposition of yours, to apply to Judge Barnard for a modification of that order?

A. They said it was an absurdity; they thought it would be entirely futile and without result, that I could not get it done; they thought it would be impossible I could get the order modified.

Q. Did not they use language indicative of entire contempt at the suggestion? A. I cannot undertake to remember what language was used.

Q. Did not they say to you that you were a fool to make such a suggestion? A. I think Mr. James Brook said I was a damned fool to think of such a thing.

By Mr. PARSONS:

Q. As that Judge Barnard would make a proper order, modifying

this injunction? A. Yes, sir; if that is proper to state here, it is just exactly as it occurred.

By Mr. CURTIS:

Q. That is what I want; just exactly as it occurred; now, what did you do in regard to that? A. At that time I did not know Judge Barnard personally; of course, I had a bowing acquaintance with him, but I had never been presented to him, and I sent for Mr. Barlow.

Q. S. L. M. Barlow? A. S. L. M. Barlow; and drove to Judge Barnard's house; the order of injunction was the 12th day of March, 1869.

Q. You drove to Judge Barnard's house? A. Yes, sir.

Q. What more? A. I called Judge Barnard's attention to the injunction order of March 12th, 1869, and laid before him the affidavit of John J. Cisco, sworn on the 12th of March, 1869, before Merritt A. Potter, Notary Public, in my office; I asked him to modify that injunction, and stated to him its breadth and scope, and how injuriously it affected our Company, and he said certainly, that it was an inadvertence; that it was so broad; that he did not intend anything of the kind at all; that he did not intend to interfere with the work or general business of the Company, and he signed for me the order dated the 12th March, 1869, at 5 P. M., by which he ordered that the order in the action made by him on the 12th of March, 1869, which, among other things, enjoined and restrained "said Cisco and his agents and servants from removing, concealing, parting with, disposing of, encumbering, or in any manner interfering with any money, bonds, security, or other property, real or personal, of or held in the name, or on the account, and for the benefit of the Union Pacific Railroad Company, be so far amended, that the said Cisco and his agents and servants shall be at liberty to pay any debt or liability of the said Company heretofore incurred, which shall become due or payable, or shall be presented for payment, or any expenses which may become payable, or may be presented for payment in prosecution of said Company's railroad line, out of any means of said Company, which are or shall be in his hands as Treasurer thereof. Dated March 12th, 1869." This modified order was an order which I had drawn, and which he signed.

Q. As you presented it? A. As I presented it.

Q. Without making any changes in it himself? A. I think he signed precisely as it was submitted to him. It was granted by Judge Barnard at once, and without any apparent hesitation.

Q. In the course of that whole litigation, so far as you had any knowledge of it, did anything come to your knowledge which caused you to believe that Judge Barnard was acting corruptly in collusion with Fisk, the plaintiff, hostilely to the defendants? A. Well, I can say that nothing occurred in that litigation which led me to believe or suspect that Judge Barnard acted corruptly at all, or that he acted in any collusion—corrupt collusion; I never thought so for an instant.

Mr. VAN COTT:

He has not answered the whole question.

(Question repeated to the witness.) A. I should say simply then, no.

Q. How long have you practised law. A. Nineteen years I have been at the Bar.

Q. Have you in the whole course of your practise known of any fact which has caused you to believe that Judge Barnard acted from either corrupt pecuniary motives in the discharge of his judicial duty or from unfair personal favoritism towards litigants? A. So far as I have any knowledge in my practice, I have never seen anything which led me to believe, and I have never believed that Judge Barnard would take a bribe in the world.

Q. There is another branch of the question, and I will ask the reporter to call your attention to the question, and will ask you to make a further answer.

(The reporter read the question to the witness.) A. That asks for my knowledge, and not for—

Q. I am not asking for anything but your knowledge? A. I have no knowledge based upon my own knowledge or practice, which would lead me to believe any such thing of Judge Barnard. My practice before him has always been satisfactory to me personally, and I have always been treated with courtesy, and while I have frequently been beaten by him—and had decisions in my favor—I have never had anything to complain of on that score; personally, never.

Q. You took some part in the various proceedings in the case of Fisk against the Union Pacific Railroad Company? A. I took a very active part after the 10th of March, 1869; a very active part, indeed.

(The examination of this witness suspended in order to give Mr. Strahan an opportunity to correct his testimony.)

JOHN H. STRAHAN, re-called:

The stenographer read the following passage from the former testimony of the witness: "When we went up that morning and got the injunction, Judge Barrett came out of the Court, and made the remark, 'That is a bold and noble act. If I was Judge, I would not have the courage to do it.'"

The witness states that he wishes to add to that statement the words, "without taking the papers."

CLARK BELL, re-called.

By Mr. CURTIS:

Q. You have spoken of an order of stay granted by Judge Rosen-
cranz? A. Yes, sir.

Q. Where was that order purported to have been signed? A. In this city.

Q. Was he holding any Court in this city at that time, to your

knowledge? A. He was not. It don't purport to have been granted in any Court.

Q. What took place in reference to that order of stay signed by Judge Rosencranz? A. A variety of things. We got an alternative mandamus from the District Court to the Judges of the Supreme Court, in this city, to compel them not to go any further in this case. That was returnable about that time, and Judge Barnard granted an order on the 27th day of March after. We served that upon Mr. Field; he granted an order on the 27th March for us to show cause on the 29th, at 10 A.M., why Judge Rosencranz's order should not be vacated and set aside. On the 23d of March we obtained a writ from Mr. Justice Blatchford, acting as Judge of the Circuit Court of the United States for the Southern District, to the Supreme Court in this District, the First District, commanding them to accept the surety and grant the prayer of the petition of the said corporation, allowing the case to be removed and transferred into the Circuit Court of the United States.

Q. Was that direction to the Judges of the State Court? A. It was. It was addressed to the Judges of the Supreme Court of the State of New York, for the First Judicial District, and for the city and county of New York, and to the Clerk of the said Supreme Court therein.

Q. Let me ask you this question first: at whose instance was it issued? A. On the application of the defendants in the action, or some of them, the various counsel for the railroad company, and, in addition, I think, Mr. Clarence Seward was called in.

Q. Was the original served on a Justice of the Supreme Court? A. It was served on Mr. Justice Barnard; we called it an alternative mandamus, and on the 27th day of March, 1869—

Q. Was there any return made on it? A. Yes, sir.

Q. What was that? A. Perhaps it would be best stated by showing what order was made on the 27th of March, 1869, by Mr. Justice Blatchford, in regard to it.

Q. If you please? A. Page 32 of what is called motion for stay, Mr. Justice Blatchford made an order—

The United States, in the relation of the Union Pacific Railroad Company, *agst.* The Supreme Court of the State of New York for the First Judicial District, and the Clerk of the said Court.

The United States, on the relation of James C. Durant, John J. Cisco and Sidney Dillon, *agst.* The Same

Proof of a due service of an alternative mandamus, issued in each of those causes on the Hon. George G. Barnard, one of the Justices of the said Supreme Court, and on the Clerk thereof having been presented to this Court, and the said relators now severally moving for a peremptory writ of mandamus in each of said cases, to Mr. D. D. Field, the counsel for James Fisk, Jr., protesting against the jurisdiction of the Court, and without waving any of the rights of the said Fisk, Jr., that since the said alternative writ was granted, an order en-

titled in the said Supreme Court by Mr. Justice Rosencranz, one of the Justices of the said Supreme Court, an exemplified copy of which is heretofore annexed, which was served upon the attorney of the said Fisk, the affidavit of which service is also hereto annexed, and moving to supersede the said alternative writs; thereupon, after argument of said motion so made by said Field is hereby denied respecting the said alternative writ, and thereupon filing in this Court said exemplified copy of this order so heretofore annexed, it is by this Court, on its own motion, without presenting any further papers or arguments, ordered that said motion for a peremptory mandamus in each of said cases be and the same is hereby denied.

Q. That was the end of it? A. That was the end of that application. You will notice these were all the same date, the 27th day of March. Mr. Justice Rosencranz granted his order on the same day that Mr. Justice Barnard modified his order; all done on the same day.

Q. Were you present in the Court before Judge Barnard when Mr. Thomas C. Durant was examined as a witness in some of the proceedings for contempt? A. I was present on one occasion when Thomas C. Durant was examined before Judge Barnard himself; whether it was in a contempt proceeding, or what proceeding it was, I don't just at this moment recall.

Q. It was some interlocutory proceeding before Judge Barnard and this Referee, was it? A. Yes, sir; I will find it, if it is important. My recollection is, that Dr. Durant was arrested on an attachment issued against him by Judge Barnard for some alleged disobedience of orders or contempt. It is probably a contempt proceeding that this evidence was given in; that is my present recollection.

Q. Did you hear Mr. Durant testify on the stand? A. I did; I was present at the examination.

Q. Did you hear him testify that General Blair had told him that Judge Barnard had said, in his presence, that is, General Blair's presence, that he had driven one set of men out of New York, and would drive another, or something to that effect? A. My recollection of that affair is this: that during Dr. Durant's examination there was an altercation between him and Judge Barnard, not in the way of giving evidence, but pending. While it was going on Dr. Durant charged Judge Barnard. Dr. Durant says: "I am informed that you said that you had driven one Board of Directors out of this city, and that you will drive another set out," meaning the Pacific Railroad direction. That is my recollection of how it occurred; it was not anything pertaining to the evidence. Dr. Durant turned to Judge Barnard, sitting right at the witness stand, and says, "I understand you have said so and so." I don't think Dr. Durant gave his authority; I think he said just that. As I recall it, Judge Barnard disclaimed it.

Q. Do you know what Judge Barnard said, if he said anything, in reply to Mr. Durant? A. I don't recollect the words; it was a very exciting thing, indeed, and Mr. Durant was a witness, and he turned—some passage had occurred pretty sharp between him and the Judge—

and he turned and made that charge against the Judge right from the witness stand, slap at him, and the Judge, as I recall it, disclaimed it. We asked the reporters to make no allusion to it; we had a crowd of reporters around there at the time, and I don't think it got into the newspapers. I understand Judge Barnard to disclaim having said it.

Q. Was not Judge Barnard on that occasion, and on other occasions when this case was before him, treated on the part of the defence with very unusual severity? A. Well, sir, so far as I had the ability on all occasions, I gave him as much as I knew how to give him, so far as I am concerned personally; perhaps it is not for me to speak. I criticized his orders, etc., with very great severity on any occasion when I said anything about them in Court, with the utmost freedom personally.

Q. How was it with the other counsel? A. If you mean disrespectfully, I don't think I ever said anything disrespectful to him in Court.

Q. I didn't mean that; I didn't mean to imply it by my question? A. Well, all those orders we denounced, I did denounce them in open Court, as being contrary to the practice, and made upon information and belief solely, one or two of them, and orders affecting a corporation of this magnitude in the interest of a notorious character like Mr. Fisk, that the Court should not have done it. We denounced it; I did unhesitatingly; I think Mr. McFarland also did. I don't pretend to recall all that was said, because we were in Court nearly every day there steadily for thirty days. I think we stated in open Court finally, that if they persisted in pursuing us with these orders of injunction, that we would prosecute Judges and counsel and everything else, because we took the ground that the proceedings having been removed to the United States Court, the State Court had no jurisdiction; that they were trespassers, and I think that counsel united in advising our clients to bring action for damages as trespassers.

Q. The sole ground, if I understand you rightly, on which your clients could take the ground that the Judges of the State Court, and all the parties promoting the proceeding on the part of the plaintiff, were trespassers, was that the cause had been removed into the Circuit Court by the filing of the petition first presented for its removal? A. Yes, sir; it was our opinion.

Q. There was no other ground, was there, than, that such a petition had been presented? A. Counsel on our side were unanimously of the opinion that the mere presentation, or filing of the petition with the Court, by operation of law, removed the case, and that it removed it absolutely and unqualifiedly, and I think the final decision sustained our view of it, when it was finally decided by Mr. Justice Nelson.

Q. Judge Barnard was of a different opinion, was he not? A. Judge Barnard decided that the petition originally granted—he denied our motion, and decided that our petition did not transfer the cause. He wrote an opinion, but we were of that opinion, and we held to that opinion, and stood upon it, and acted upon it.

Q. And acted upon it in settling and following out the policy that

you pursued towards the State Court? A. I should say in answer to that, that we acted upon that opinion. We went forward upon that theory of the case.

Q. What other proceedings, if any, besides getting a mandamus from Judge Blatchford, directed to the Judges of the State Court, and besides presenting a petition to the Circuit Court, to declare that the case was removed, and to proceed in the cause, did your clients promote in the Circuit Court—any? A. We made a motion there for a stay of proceedings, on the ground that the cause was removed.

Q. And that was argued? A. And that was argued.

Q. And decided? A. And decided by Mr. Justice Blatchford.

By Mr. TILDEN :

Q. The motion before Judge Nelson was a motion to dissolve the injunction? A. Yes, sir.

By Mr. CURTIS :

Q. Treating the cause as being in that Court? A. Yes, sir; the first motion was for a stay, before Mr. Justice Blatchford, and then we made a motion direct in the Circuit Court, which brought up all the intermediate questions. We made a motion to dissolve the injunction.

Q. At that time, while these proceedings were taking place in the State Court, and in the Circuit Court, were not the two Courts brought into direct collision? A. Well, we thought so.

Q. When you proposed to go to Judge Barnard to modify the order that you have spoken of, which you expected to obtain a modification of, with the assistance of Mr. Barlow, or accompanied by Mr. Barlow, did Mr. Tracy say anything in regard to taking that step? A. Mr. Tracy knew of it, and consented to it.

Q. He did? A. Yes, sir.

Q. Didn't oppose? A. Oh, no.

Cross-examined by Mr. PARSONS :

Q. In Judge Barnard's opinion denying the motion to remove the cause, does he place his decision at all upon the point that there had not been filed with him the bond required, to remove the cause? A. I don't find it; will you call my attention to it?

Q. It is not there at all. Does he not put his decision upon entirely different ground? A. Well, it is in writing, and it speaks for itself. I have not read it for some time. I saw nothing of that sort. The opinion seems to be put here upon—

Q. Upon totally different ground, is it not? A. Yes, sir.

Q. Do you know the reason why Judge Barnard held so important a motion as that to remove the cause from the State to the Federal Court, without any decision by him, from the month of October, 1868, when the motion was heard, until the month of March, 1869, when his decision was filed? A. I have not the slightest idea; I have no knowledge to answer that question. I don't know why.

Q. Was not that delay very oppressive upon the interests which were in your charge, and in the charge of your associate counsel? A. So far as the action was concerned, we were under a stay, you remember, but the whole litigation was injurious to us.

Q. Was it not the desire and effort of your side of the litigation to have the case removed, as speedily as possible, to the Circuit Court of the United States? A. Certainly, we desired it.

Q. Was not the motive for that effort and desire on the part of the Company the wish to be relieved from the jurisdiction of Judge Barnard? A. We wished the cause removed to the Supreme Court of the United States, and not to be tried in the State Court. I don't know that I could say any one Judge had jurisdiction of an action. Perhaps I don't understand your question.

Q. (Repeated.) A. I think it was the opinion of the counsel that the best interests of the Company would be promoted by removing the cause from the State Court into the Federal Court.

Q. Can you not answer the question which I put to you? A. I don't think, so far as I know, that anything was made personal to Judge Barnard. A part of these applications were before Judge Cardozo. You limit it to Judge Barnard. So far as I know, I could not say that that was so, as applied to him personally.

Q. Do you mean to say that you have no knowledge on that subject? A. I mean to state that it was the opinion of all the counsel that the best interests of the Company would be promoted by removing the cause from the State Court into the United States Court. That is the best answer I can give to it.

Q. Do you not know that the Company's refusal to submit to the jurisdiction of the State Court was from fear, not of ultimate and final decision against them upon the merits, but injunctions and receiverships, and other processes of that character, improperly granted, without merit to sustain them. A. The managers of the Company believed, as they were then building the road, and placing their securities before the general public, that they would suffer great injury in the depreciation of their securities by the mere fact that they had a litigation, or that they had an injunction or a receivership, or the announcement of it in the street, and consequently dreaded not so much the final result of any litigation as the fact that they were to have any, and they did feel that if it was removed to a tribunal where injunctions or Receivers would not be granted, that it would be greatly to their benefit.

Q. Were the injunctions and receiverships, and other processes of that character, in dread of which they were, injunctions, receiverships, &c., which should be properly granted, or which should be improperly granted? A. We would say—our side would say—that there was no proper cause for the granting of an injunction, and it is a matter for the determination of a judicial tribunal in a given case, whether it is a proper case for an injunction and Receiver. I never believed that the case of Mr. Fisk was a proper case for an injunction and Receiver.

Q. You were on the side of which you speak as our side, were you

not? A. Yes, sir. You remember that it is very easy to get injunctions in this city on various pretences by stockholders on allegations, and the mere fact that an injunction is obtained against a Company will depreciate its securities. At that time we were placing them before the general public, and our securities were very much depreciated by the mere announcement that we had a litigation and injunction at all.

Q. During what length of time, so far as you know, has there been this ease in obtaining injunctions and orders appointing Receivers? A. Well, I am very free to say, ever since I have been at the Bar in this city.

Q. How long has that been? A. I came here in the year 1863—1864.

Q. Have the names of any particular Judges been especially prominent in connection with this free use of injunctions and receiverships? A. I think all Judges in the city grant them without any respect, on a given case, on a particular case. For instance, an injunction against our removing—

Q. I should very much prefer that you should adhere to the question. (Question repeated.) A. Do you refer to the Supreme Court?

Q. I refer, to the Courts in the city of New York. A. I should say that all Judges of the Supreme Court in this city have granted injunctions and Receivers. Mr. Justice Barnard repeatedly and frequently, and Mr. Justice Cardozo repeatedly and frequently, and Mr. Justice Ingraham.

Q. Repeatedly and frequently? A. I should say so.

Q. Is that the best answer you can give to the question I put to you? A. Well, I would name those three Judges as granting them. I don't think I could exclude any Judge. I think all the Judges of the Court grant injunctions.

Q. Did you understand that to be the question I ask? A. I understood you to ask me to designate certain Judges who grant injunctions and receiverships frequently.

Q. I ask you whether the names of any particular Judges were prominently mentioned in connection with this freedom of granting orders of injunction and appointing Receivers? A. Mentioned by whom, by the press or public?

Q. By the public? A. Oh, yes.

Q. By those with whom you meet; do you say yes? A. I say yes.

Q. Will you name those Judges? A. I should say, Mr. Justice Barnard, Mr. Justice Cardozo, and Mr. Justice Ingraham, of the Supreme Court.

Q. With which of the managers of the Union Pacific, during the time mentioned in your testimony, were you in the most intimate communication; who did you most frequently see and with whom did you most frequently converse? A. Vice-President Mr. Thomas C. Durant, who was the general manager of the Company.

Q. Were you not in communication with others of the managers?

A. Yes, sir; but you asked me to designate which one I was most intimate with?

Q. Which others were you in the habit of seeing and communicating with upon the subject of this litigation? A. With Mr. Bushnell, Cornelius S. Bushnell, who resided at New Haven; with both the Ames, who resided in New England—Massachusetts; and with Mr. Sidney Dillon, who lived in this city; but altogether the most with Dr. Durant, because he was right here, and my office was closely connected with him.

By Mr. TILDEN:

Q. Were not your relations with Dr. Durant most intimate? A. Yes, sir.

Q. So that if there had been a question between him and the other Directors of the Company, you would have attached yourself to him? A. My relations were very intimate with Dr. Thomas C. Durant, and most intimate with him altogether.

By Mr. PARSONS:

Q. Had Mr. Samuel L. M. Barlow acted as counsel for the Company prior to the occasion of his accompanying you to Judge Barnard's house? A. I think he had in regard to one or two transactions

Q. Have you any such recollection? A. Oh, yes.

Q. Can you specify any transactions in which he had acted as counsel prior to that time? A. Let us see; what is the date?

Q. 12th of March, 1869, the date of the order, to procure a modification of which you went to Judge Barnard? A. He was first called in, if I recollect it, to a proposed settlement, but I cannot remember the date, but he acted as counsel; I know that positively, or I would not have thought of sending for him. I sent for him because he was really one of the counsel in the case.

Q. You stated that when you reached Judge Barnard's house on that occasion, it was yourself who made an application to Judge Barnard for a modification of his order? A. Mr. Barlow was with me.

Q. But you said that you yourself made the application personally to Judge Barnard? A. I did.

Q. Being accompanied by Mr. Barlow? A. Yes, sir.

Q. Is that the fact? A. That is the fact.

Q. Will you state, if you please, why you selected Mr. Barlow to accompany you on that occasion? A. I supposed Mr. Barlow was personally acquainted with Judge Barnard.

Q. Had you heard that there was an intimacy between Mr. Barlow and Judge Barnard? A. I can't say that I ever heard that there was any particular intimacy, but I assume that Mr. Barlow was well acquainted with Judge Barnard from the nature of his position.

Q. What position do you refer to? A. Well, a prominent lawyer here in the city; a member of the same political party, and a man whom I always understood to be acquainted with him, and I inferred—I didn't ask any questions—I inferred that he knew him personally,

and that he would be a good man to go with me to get this order modified.

Q. Do you not remember that it was Mr. Barlow who made the application to Judge Barnard for the modification of the injunction? A. Mr. Barlow asked Judge Barnard to consent to a modification, also; he had a conversation with him, at the same time, in my presence; he did make the application also. It was not one of us, to the exclusion of the other; we both united in the application.

Q. Do you remember that the reply of Judge Barnard was in words or substance to this effect: "Sam, if you say I ought to modify that injunction, I will do it?" A. Well, I don't think so; I don't recollect any such thing. I don't undertake to state what the language was. I can give you my language, what I said to him, if you wish it, the exact words.

Q. I desire to refresh your recollection, if I can do so, whether that was the response which Judge Barnard made to the application, "Sam, if you say I ought to modify that order, I will do so?" A. I don't think so.

Q. Is your recollection such that you can state that that was not Judge Barnard's reply? A. I would not undertake, at this distance of time, to swear positively that anything did not occur. I cannot do that; I have quite a distinct recollection of what I said, and Judge Barnard's answer. There was a great deal of talk after the order was signed of a different character, and I don't remember any such thing as that to have been said.

Q. Did Judge Barnard learn from your interview on that occasion how ruinous to the Company was any interruption to its business, or any interference with the securities it was negotiating to provide money to meet its expenses? A. I think very likely, although I don't remember it—I think very likely we may have urged that. I think very likely it was alluded to, but I don't recollect definitely. My recollection is this: I said to Judge Barnard, "If you—

Q. You have answered the question. A. Well, all right.

Q. How long after that interview with Judge Barnard was it, that Judge Barnard made an order appointing William M. Tweed, Jr., Receiver of the property, assets, &c., of the Company, including all the securities which it had in the city of New York, with which to meet its expenses? A. You ask for the date of the order in which the Receiver was appointed, I suppose. The final order appointing the Receiver of the Credit Mobilier of America, to which, I suppose, you refer, was granted on the 18th day of March, 1869, six days thereafter.

Q. Three days thereafter, was it not? Was not your modification obtained on the 15th of March? A. No, sir; it was done on the same day, the 12th of March, at 5 o'clock in the afternoon, I see it is dated.

Q. Did you not urge upon Judge Barnard to procure that modification that the suit was a speculative suit, and that it had no meritorious foundation? A. I think the statement to Judge Barnard was:

"Judge Barnard, if you are going to make us settle with Jim Fisk anyway, before we go any further with this litigation, all right; but we can not go a step further under this order if we obey it."

By Mr. TILDEN :

Q. What do you mean by going a step further? A. With the building of the road—the enterprise; "we cannot go a step further with the building of this road, with the enterprise." I said just that to him. I said: "Do you propose to make us settle with Jim Fisk anyway before we go any further in this litigation."

By Mr. PARSONS :

Q. What connection was there between Judge Barnard's order and any necessity of settlement between your Company and Jim Fisk? A. As we believed, as we thought, if that order stood we had ten thousand men employed; our disbursements were said to be \$80,000 per day, and this order absolutely prevented our Treasurer paying out a cent of money, and, of course, if we obeyed that order, it would throw our affairs into confusion; we could not obey such an order as that, and the only way would be to settle with Jim Fisk.

Q. Did Judge Barnard's order of the 18th of March, 1869, appointing William M. Tweed, Jr., Receiver, hurt or benefit your Company? A. I think it hurt it.

Q. Seriously or slightly? A. It hurt it very seriously, indeed; the announcement of it to the public did us great damage.

Q. And that came within six days after your explanation and statement to Judge Barnard? A. It did, on the 18th.

By Mr. TILDEN :

Q. Did this injunction order also prevent the paying of debts by Mr. Cisco, Treasurer? A. Yes, sir; as it was drawn it restrained him from paying out any money at all for any purpose.

Q. So that you not only would have had to discharge 10,000 men, and stop your work, but you would have had to go to protest in the city of New York, where you had large sums of money coming due upon your notes? A. If we had obeyed that injunction order we would, of course, have suffered irreparable injury, and it was a matter that we could not do; we could not obey it.

Q. What I want to know of you is this: whether, besides stopping your work, you did not owe large sums of money in the city of New York, coming due from day to day? A. Certainly.

Q. Upon your paper that would have had to go to protest? A. Certainly; very large sums of money.

By Mr. PARSONS :

Q. Did not both the order of injunction, which you say it was impossible to obey, whether you obeyed it or not, and the order appointing a Receiver, irreparably injure your Company? A. Yes, sir; it

would have been an irreparable injury to have obeyed that injunction order, if it had not been modified.

Q. Was not the granting of it an irreparable injury to the Company? A. Well, it was granted one day, and modified the same day, and I don't know whether it stopped any payments that day.

Q. Aside from that, was not the fact, and its effect upon your securities, an irreparable injury? A. I don't think that was known to the public like the other.

Q. Answer as to the order appointing a Receiver? A. The order appointing a Receiver was an order that, in its consequences, resulted very injuriously, indeed, to us.

Q. Have you any knowledge how many millions of dollars was the loss which it caused to your Company? A. Well, the question asks me to attribute the loss directly to that. I know that the securities depreciated very largely, indeed.

Q. Immediately? A. Oh, yes.

Q. Do you remember what you said to Dr. Durant, when you heard that Judge Barnard had appointed Wm. M. Tweed, Jr., Receiver of this Company, only six days after this interview at his house, when you had told him how serious would be any interference with your operations? A. I have no recollection. If you choose to call my attention to it; I don't know to what you refer.

Q. Did you not indulge in very severe strictures upon Judge Barnard? A. Very likely; I did during the whole progress of the litigation.

Q. Is it not the fact that you did? A. Oh, yes; undoubtedly; we felt very strongly upon the granting of that injunction; we were not choice in our language among ourselves, certainly.

Q. Did you not tell Dr. Durant that that showed that Judge Barnard was entirely under the influence of Fisk, and of David Dudley Field, his counsel? A. No; I don't think I ever said that.

Q. Did you not also tell Mr. Bushnell that? A. Oh, no.

Q. Think for a moment? A. I never told anybody any such thing as that, I don't think; I have no recollection of ever saying anything.

Q. Can you state that you did not use just that expression, or the equivalent to the expression, both to Dr. Durant and to Mr. Bushnell? A. Repeat your expression.

Q. That that showed that Judge Barnard was entirely under the influence of Mr. Fisk, and of David Dudley Field, his counsel? A. I have no recollection of ever making such a statement.

Q. Will you venture to say that you did not make that statement? A. Well, if I made any statement at all—I prefer to say that I have no recollection of ever making it at all.

Q. Is that as far as you venture to go? A. Yes, sir; I have no recollection of making such a statement.

Q. You have stated, according to my recollection of your testimony, that you never entertained the opinion that there was any corrupt collusion on Judge Barnard's part; by corrupt, did you mean pecuniarily corrupt? A. Certainly; what I mean by that, that Judge Barnard

has not been bribed to make any decision, or any action in a case, for a consideration.

Q. All that you meant to say was that you did not entertain the opinion that Judge Barnard had been directly bribed by money, to grant orders? A. Yes, certainly; I don't think that.

Q. Did you not, yourself, in the course of the litigation, frequently advise those of the managers of the Company, whom you saw, that Judge Barnard's course was extraordinary and unjustifiable, and due to the improper influence of Mr. Fisk, and of Mr. David Dudley Field? A. I have in Court, and out of Court, in the proceedings, and to the clients, denounced the granting of those orders of injunction on the part of Judge Barnard, but never under any idea that they were obtained by any bribe or any corruption.

Q. That is not what I ask you; I ask you whether you did not advise your clients that Judge Barnard's course was due to the improper influence of Mr. Fisk, and of David Dudley Field, his counsel, and you may answer, if you did not so advise them with reference to Mr. Fisk, and with reference to Mr. Field, separately? A. It is impossible for me to recall all that has transpired between myself and all those clients in regard to that; I denounced that action on all occasions to my clients, but I never remember on any occasion to any of them, to urge a belief on my part that Judge Barnard had been influenced in his action by any corrupt motive.

Q. That is not what I ask you; I ask you whether you did not—and I will enlarge the question by asking you whether you did not frequently—advise your clients that Judge Barnard's course was due to the improper influence—I don't say corrupt—improper influence of Mr. Fisk, and also of Mr. David Dudley Field, as his counsel? A. In regard to Mr. Field—it was a matter that I have said, and other counsel have said that Mr. Field seemed to get in that action what orders he asked for.

Q. What orders he wanted? A. What orders he asked for.

Q. Right or wrong? A. I won't say that.

Q. Won't you add that? A. No; I won't add "right or wrong," because I have no knowledge of having said that.

Q. Were not the orders which he got, wrong; I ask you as a lawyer, were not the orders which he got, wrong? A. We argued that they were, in Court.

Q. Didn't you honestly argue so? A. I did.

Q. Then they were wrong, were they not, in your judgment as a lawyer? A. Yes, sir.

Q. And Mr. Field got them from Judge Barnard when they were wrong? A. Certainly.

Q. Did you not also advise your clients that the influence of Mr. Fisk over Judge Barnard, in that litigation, was improper? A. I remember having talked upon the subject with Dr. Durant once, in regard to Mr. Fisk.

Q. And his improper influence over Judge Barnard? A. Yes, sir; but I have no personal recollection of having any conversation upon

that particular subject, or any other; though, if you should refresh my memory by circumstances—

Q. Who is James Brooks, who said you would be a damned fool to apply to Judge Barnard for a proper modification of that injunction order of the 12th of March, 1869? A. James Brooks at that time was a member of the Board of Directors.

Q. Is that the only connection in which he is generally known, as a member of the Board of Directors of the Union Pacific Railroad Company? A. He is one of the editors of the *Evening Express*.

Q. Is he not a Member of Congress, and was he not at that time? A. I think he was a Member of Congress, then; though I won't be sure.

Q. Prominent as a public man, is he not? A. Yes, sir. I don't know as I ought to say there, "damned fool."

Q. I don't know whether you ought to or not; you did. A. I understood that that expression was used, but I don't know as I care to—I guess it was a pretty unanimous opinion there that a motion of that sort would be unsuccessful.

Q. Right or wrong? A. Well, it was conceded to be right;—yes, that there was no use in making any application whatever to Judge Barnard in the matter.

Q. Why, Mr. Bell; why? A. There had been a great deal of scandal in the public press, against Judge Barnard, in the progress of the cause; we had an army of reporters there, and it was commented upon editorially in all the newspapers of the city, and denounced, especially the order directing our safe to be broken open.

Q. Did that scandal prevent an application to Judge Barnard? A. Not at all, and I made it; but I say that feeling obtained a place among certain members of the Board.

Q. Have you any distinct recollection of the altercation, the colloquy, when Dr. Durant referred to what he had heard to the effect that Judge Barnard had said that he had driven one set of scoundrels out of the State, and would drive another? A. I remember the affair. I was present and witnessed it.

Q. Have you any very accurate recollection of what was said in that altercation by Judge Barnard, and what was said by Mr. Durant? A. I cannot undertake to state exactly what was said, but I will give you my best recollection of it.

Q. I simply wanted to know whether you had any very accurate recollection. I don't ask you to state what they said. A. I don't know how accurate my recollection is. I can give you my best recollection; that is the best I can say. I have in my scrap books the reports of that affair, but I have not referred to them. Perhaps by looking at them I could state exactly.

Q. You have stated that you asked your reporters not to note in their minutes something which transpired on that occasion? A. Yes, sir.

Q. What was it that you asked them not to note—what was said by Dr. Durant, or what was said by Judge Barnard? A. What was said

by both of them; I think particularly what was said by Dr. Durant, because he was a witness on the stand, and being purged of contempt, and that was a contemptuous thing for him to have done, as we thought. I think it did not appear in the public press; that is my present recollection, but I won't swear to that positively, because I have not looked.

Q. Was he not being examined by Mr. Field? A. Whether it was on the direct or cross I don't remember now?

Q. Assuming that he was being examined by Mr. Field, was it a contemptuous thing for him to answer Mr. Field's questions, even though it compelled a disclosure of that statement? A. My recollection is that it came up as a sort of by-play between Judge Barnard, and Dr. Durant; Dr. Durant was on the stand, and I think it came up; Dr. Durant, turning right around to Judge Barnard, right from the witness stand, and making the charge; not any part of the evidence. That is my recollection of it, though I won't be positive at all.

Q. Is your recollection very clear? Do you feel very confident of the accuracy of your recollection? A. Well, if it is a matter of sufficient importance, I prefer to examine the accounts in the newspapers of that day to refresh my recollection, and I would be able to state more accurately. I give my best recollection as it now is.

Q. Did Judge Barnard disclaim what Mr. Durant attributed to him? A. I understood him to.

Q. Will you state that he did so? A. I understood so, certainly.

Q. Did he not change the form of expression which Dr. Durant attributed to him, and say, "That is what I said," or something to that effect? A. Yes, I think that is substantially the way; that Judge Barnard denied having said that, and made some correction as to what he did say.

Q. Did not Judge Barnard admit that he had, in substance or effect, made a statement substantially that he had driven one set of people out of the State, and would drive out another? A. Well, I can't so remember it.

Q. Have you such a recollection as enables you to state that that was not the fact? A. I can only state what I do recollect.

Q. Won't you please to answer my question? Have you such a recollection as enables you to state that that was not the fact? A. As you have stated it?

Q. As I have stated it: that Judge Barnard changed the form of expression and said that what he had said was what I ask you? A. I have no recollection of its occurring as you state. Judge Barnard did, however, change the form of the expression to make a concession of having said something. The exact language, or the purport of the language, I cannot recall.

Q. Something to the effect that he had driven one set of people out of the State, and would drive others? A. I think that was the offensive part of it which Dr. Durant made the charge on. I think it was that part of it which Judge Barnard disclaimed.

Q. Did not Dr. Durant, in giving the version which had been men-

tioned to him, use the expression that Judge Barnard himself had said that he had driven out one set of scoundrels, and he would drive out another; and was not the modification which Judge Barnard made in respect to the expression, "scoundrels?" A. My recollection is not complete enough to undertake to answer that question.

Q. You cannot answer positively? A. No, sir.

Q. You could not contradict anybody who stated that Judge Barnard had substantially used that expression? A. Oh, no—no. I wouldn't undertake to contradict anybody. This is my best recollection of what occurred there.

Q. You stated on your examination by Mr. Curtis that you had criticised with great severity Judge Barnard's orders. To what orders do you refer? A. It is impossible for me, at this length of time, to tell exactly the occasion, but on these return days when we were ordered to show cause on an injunction order, granted on mere information and belief, I have a present recollection of denouncing it in Court.

Q. There were many such orders, were there not? A. The one which was granted on the affidavit of O. H. Whitmore, I think, is the one which I refer to more particularly. I took the occasion to remark to Judge Barnard, in open Court, that I did not consider that a Judge had a right to grant an order upon information and belief alone; that I had not understood the practice to be in that way, and I denounced it as being an improper order in that respect.

Q. For that reason? A. Yes, sir.

Q. And not for the reason that the case had been removed to the Circuit Court of the United States, but as well for the reason that orders were improperly granted, assuming the case still to be in the Supreme Court? A. Certainly; we were there; we were compelled to be there, and we resisted it on all grounds.

Q. And denounced it on all grounds? A. Yes; we denounced it pretty sharp.

Q. One ground was the improper influence of Fisk, was it not? A. I do not remember that that ground was taken in open Court.

Q. I do not ask you to confine yourself to grounds that were taken in open Court. A. There were members of the Board that thought that undoubtedly; I never did.

Q. Did your confidence in Judge Barnard, which led you to visit him on the evening of the 12th of March, 1869, continue unabated when he made this order which you say you denounced in the manner in which you have stated? A. I did not go to Judge Barnard on account of any confidence. I did not know him personally at that time. I was introduced to him then personally, and I went to him because there was no other way for us to do where an order of that kind had been made *ex parte* but go to the Judge who made it. I went to him as a lawyer, because I had a right to go and ask him to do a thing which he ought to do.

Q. You have stated that in some consultations between the counsel for the Company, you expressed a confidence of your being able to suc-

cessfully continue the litigation in the State Court. Did that confidence of the expediency or propriety of continuing the litigation in the State Court continue unabated after Judge Barnard appointed William M. Tweed, Jr., Receiver? A. Why, it was continued up to the present time.

Q. Not affected at all by the order appointing William M. Tweed, Jr., Receiver? A. If I had—

Q. Won't you answer that? A. Certainly.

Q. Not affected at all by his appointment of William M. Tweed, Jr., Receiver, in the order which you say you denounced to him in open Court? A. Well, that is my answer; if I had a litigation in the State Court I would fight them in the State Court, and I would hope to succeed if I was right.

Q. The Judges to the contrary notwithstanding? A. The Judges to the contrary notwithstanding. I have had my share of success, I think. I believe I could do it in the State Court, or any other lawyer in this city.

Q. Whatever might be the influence prevailing with any particular Judge? A. That is my opinion, and the result of my practice has justified it.

By Mr. TILDEN:

Q. Do you mean the Special Term, or Chambers, or General Term, or Court of Appeals? A. I mean at Chambers.

By Mr. PARSONS:

Q. You mean that if you encountered a wrong, that there would be an opportunity to right it by appeal, or in a legitimate way? A. Yes, sir; I am not one of those who sit down and take the ground that we cannot try causes in the State Court.

Q. Was there any legitimate way of righting the wrong done by the appointment of William M. Tweed, Jr., Receiver; was there any possible way in which to repair the wrong which your Company sustained by that order? A. Measuring it as money damage?

Q. Precisely; measuring it as money damage? A. I should say it was. *Dammun absque injuria*.

Q. Do you mean it was a loss without redress? A. Loss without redress.

Q. Would you have sustained that loss in the Circuit Court of the United States; could you have sustained that loss in the Circuit Court of the United States? A. If the same order had been granted, we would.

Q. Could such an order be granted in the Circuit Court of the United States? A. Well, that is asking too much of me to say what they will do; they will do some pretty queer things in Courts. I would not say that they would not do it.

Q. You would not expect such an order there, would you? A. The practice is wholly different. I have heard of their granting Receiv-

ers in that Court. I do not think it is a proper question to ask me, or for me to give an opinion upon what the Circuit Court will do.

Q. You prefer not to answer the question? A. Yes, sir; I prefer not to answer it.

Q. You used this expression on your examination by Mr. Curtis, that you said on one occasion, referring to Judge Barnard, if they persisted in prosecuting us with these orders, the conclusion of the counsel of your Company was that Judges and all were to be sued for trespass? A. Yes, sir.

Q. What Judge was embraced in that expression, "If they persisted?" A. The expression, "if they persisted," probably would refer to Mr. Field and his clients, and Judge Barnard was the Judge that we threatened to sue for trespass.

Q. And that was for persisting to prosecute you with these orders? A. It related more particularly to the order forcing open our safe, and carrying out these orders of Judge Barnard after we claimed the case was removed?

Q. Who made those orders? A. The Judge to whom we referred was Judge Barnard; I don't know that we said that to Judge Barnard, and I do not know but we did though.

Q. You talked of it considerably among yourselves, did you not? A. Yes, sir; we talked of it decidedly among ourselves; and I believe on one occasion it was said in open Court that we should seek redress in damages, but I would not be positive.

By Mr. TILDEN :

Q. You do not remember that it was so stated? A. No; I do not remember that it was so stated.

Re-direct by Mr. CURTIS :

Q. Did you understand the Company entertained a purpose to remove its office out of this city before the occurrence of the opening of the safe? A. There had been a party in our Board, called the Boston party, that favored the removal of the offices to Boston.

Q. How early? A. I do not remember what time that commenced; there were certain difficulties grew up between Dr. Durant and the Boston people, of various kinds; I cannot state about dates; there was a party in our Board that wished to remove it to Boston.

Q. Irrespective of any condition of the Courts here? A. Oh, yes; quite irrespective of that.

Q. Had that been a subject of discussion or consideration among the Directors before their safe was broken open by Judge Barnard's order? A. I cannot say that any action had been taken upon it by the Directors.

Q. Had it been a subject of discussion or consideration among them? A. I have no recollection of any particular conversation.

Q. Did you never converse with Mr. Durant in regard to it? A. Mr. Durant is a New Yorker, and naturally would be opposed to removal.

Q. Did you ever converse with him in regard to the wishes of the Boston party in the Board? Did you ever have any conversation with him on the subject? A. I do not recollect any particular conversation; Dr. Durant had been assailed in the organization by the Boston interest in various ways, and they had had litigations; he had brought suits, and counter-suits, a great deal of litigation, a great deal of feeling.

Q. Between the two portions of the Board? A. Yes, sir; which finally resulted in pretty sharp litigation.

Q. What influence had that state of things in causing the removal to Boston finally? A. It is impossible to say to what extent. When this litigation took this shape—

By Mr. PARSONS:

Q. You mean the Fisk litigation? A. Yes, sir; when the litigation took this extreme shape, in the month of March, 1869; after that the Boston people urged the removal of the offices, and the offices were removed.

By Mr. CURTIS:

Q. They had urged it before, had they? A. Spoken of before, but scarcely any of them resisted it after this. The offices were removed; I do not know whether Dr. Durant consented to it, but I think that certain of the Directors who were friendly to the Doctor, and friendly to the New York direction, yielded to the idea that the office be removed to Boston. There was some act of Congress.

Q. Authorizing it? A. Yes, sir; an act of Congress authorizing it, which was mainly instigated by Mr. Alley, who was then in Washington representing the Board—was a man from Massachusetts, from Lynn.

Q. He was a Member of Congress from Massachusetts, was he not—John B. Alley? A. He had been; whether he was at that moment or not I do not know.

Q. He was a Director? A. Yes, sir.

Re-cross by Mr. PARSONS:

Q. Do you not remember the circumstances of the removal of the Company to Boston, and of the passage of the act of Congress permitting it? A. Yes, sir; I think I do.

Q. It was due to this litigation, was it not? A. It was alleged as a reason.

Q. Do you not know that it was due to this litigation? A. The removal?

Q. The removal, after the procurement of an act of Congress which permitted the removal? A. So far as Mr. Alley was concerned, I think he so represented to Congress.

Q. I ask you, so far as everybody in the Company was concerned, was not the removal compelled by this litigation, in the judgment of everybody interested in the Company? A. My opinion—

Q. I ask you for the fact? A. I will give them as I understand them; my idea is that the Boston people seized this occasion to remove the office to Boston, because it did not make the slightest difference with the litigation at all.

Q. Did it not protect the Company against future raids of this character, that they should be under the jurisdiction of the Courts of Massachusetts, instead of under the jurisdiction of a Court of which Judge Barnard was a member? A. Not at all, because under the law proceedings can be served upon the Directors who are here; the Directors had to be here all the time, and were all the time within the process of the Court.

Q. How about the twelve or fifteen millions of securities in the safe at the time Mr. Tweed was appointed Receiver? A. Is there any allegation that there was such an amount?

Q. Well, then, or immediately preceding. Yes, there is such an allegation; at the time the order was made; removed before the order could be served? A. I was going to say outside that, the Receiver never got anything by his order.

Q. Was that the fault of the order? A. No; I guess not.

Q. We will leave that there. A. Upon the other subject, I think the removal to the United States Court made no difference with the result of the litigation. I think any lawyer will so state.

By Mr. TILDEN:

Q. You made one expression that perhaps you might desire to explain: you spoke of your feeling and purpose to resist the Court, or its action; did you mean physical resistance, or resistance by legal measures? A. Well, do you ask for my opinion, or the wishes of my clients?

Q. You used that phrase, and I want to call your attention to it, for you to state what you mean by it? A. Of course, I mean such legal methods as we could resist the orders; there was at one time an idea on our part to resist the execution of that order by calling in the United States troops; there was a conflict of jurisdiction there; I think Mr. Barlow was there at the time; they came in with the Sheriff, and were willing to advise forcible resistance. From our stand-point we had a right to do so. We claimed that they were trespassers, that they had no business in there at all, and I think to-day, if we had put in United States troops there and cleared them out, we would have been sustained.

By Mr. PARSONS:

Q. Would not that be an extraordinary action, to resist the process of the Supreme Court? A. The whole thing was extraordinary.

Q. You mean the action which compels such a resort? A. Well, I was—

Q. Won't you answer that question; do you mean the action which compelled such a resort to thwart it? A. We regarded the case as very extraordinary on our part.

Q. By that you mean the order which Judge Barnard granted? A. I mean the order compelling the safe to be broken open; that is what made the main excitement.

Q. That reminds me that I omitted to ask you one question. Do you remember that the proceedings through that whole litigation were very carefully reported by a stenographer employed by the Company; I mean the Court proceedings? A. I think they were; I think that, in addition to the stenographers that were furnished by the press, private stenographers were there.

Q. Those reporters were Warburton, Bonyuge and Devine, were they not? A. Well, different counsel had different reporters. Mr. Tracy had a reporter, I think; I remember that name, Warburton, as being a reporter who reported for Mr. Tracy.

Q. Do you not remember the order under which the safe was broken open was made on March 30th, 1869; and on that day, either in that order or by some verbal direction to the Sheriff, Judge Barnard, at 20 minutes past 12 o'clock, noon, directed an order to the Sheriff to open the safe and bring the papers contained in the safe here, referring to the Supreme Court, where he sat at the time, at 1 o'clock? A. Tell me the date of that; where is that order?

Q. I ask from your recollection. A. I cannot remember that from my recollection; if you will refer me to the order—

Q. I am referring to the stenographer's minutes? A. I cannot remember.

Q. Do you remember this: that on one occasion, either on the 29th or 30th of March, 1869, when there was some question before Judge Barnard of relief to your clients from these contempt proceedings, by *habeas corpus*, his saying that, by a statute, all writs of *habeas corpus*, for the next two months, would come before him? A. No; I do not recollect that.

Q. Have you no recollection on that subject? A. No; I have not; it may be that on referring to my minutes at home I could tell.

WILLIAM J. A. FULLER, a witness, being duly sworn, testifies:

By Mr. CURTIS:

Q. You are a counsellor-at-law in this city? A. Yes, sir.

Q. How long have you been in practice here? A. Something over fifteen years.

Q. Were you appointed, by an order of Judge Barnard, a Receiver of certain stock of the Albany and Susquehanna Railroad Company, in 1869, which stock you had occasion to demand from Mr. David Groesbeck? A. I was.

Q. Did you make a demand on Mr. Groesbeck for that stock? A. Yes, sir.

Q. Please state what occurred. A. I called at Mr. Groesbeck's office, whom I knew, and shook hands with him, and told him I had an order for that stock. I had some talk about Orange and my family—we had been neighbors there. He got the stock and showed it to me, and put it in my hands upon my assurance that I would return it to him if he did. I explained to him at that time what my position was, and advised him to send for his lawyer, which he did.

Q. Who was his lawyer? A. I think he sent for Martin & Smith, to their office. The lawyer came; who he was I do not know; I did not know him. We had some talk about it. I had the stock in my hand, I think, two or three times before he finally left it with me. The receipt that I drew for the stock was altered and amended by Mr. Groesbeck's lawyer. I had with me a Deputy Sheriff, who had a writ of assistance; I explained to Mr. Groesbeck the nature of the writ, and told him that, of course, as between him and me, there would be no trouble, or no occasion for anything of that sort. The stock was given to me by Mr. Groesbeck pleasantly; that is all that transpired, as near as I can remember.

Q. Were you present at the election in Albany when two sets of Directors were chosen? A. I was.

Q. What led you to go to Albany, to attend that election? A. An annual visit that I had made for years before to Saratoga, Lake George and the Adirondacks; and I knew that that election was coming off.

Q. You knew that the election was coming on? A. Yes, sir.

Q. Did you take with you, when you left the city, the certificates of that stock? A. I did.

Q. And the papers appointing you Receiver? A. Yes, sir.

Q. Did you anticipate when you left the city, or intend when you left the city, to vote at the election on that stock? A. No, sir; I did not. I had canvassed the matter in my mind, and I thought that I would be there, that it was my duty to be there, and that I should be governed by circumstances. I intended in my own mind to do nothing with the stock, but to be a "quiet looker on in Vienna," which was the role which I had set myself to play.

By Mr. PARSONS:

Q. Unless the circumstances compelled some change? A. Yes, sir.

By Mr. CURTIS:

Q. Did you vote at the election? A. Yes, sir.

Q. Under what circumstances, and why? A. I was told by Mr. Thomas G. Shearman that there had been an injunction prohibiting any voting upon any stock unless the stock which I held should first be voted upon, or it was represented to me, unless I voted there could be no election, and it was at the request, suggestion and advice of Mr. Shearman, and under those circumstances, that I voted.

Q. Did you see that injunction—the injunction to which he referred? A. Yes, sir; Judge Clute's injunction.

Q. Did not that injunction prohibit an election unless the holder of that stock, which was then in your hands as a Receiver, was permitted to vote? A. It did; that is my recollection of it.

Q. Did you vote upon the ground that you were a holder, then, in contemplation of that injunction? A. I did.

Q. Did you see Mr. David Dudley Field there at that time? A. I did.

Q. Did you at any time see him standing in the doorway between two rooms, in this attitude (illustrating), with his thumbs in the arm-holes of his waistcoat, leaning against the door-posts? A. I did not.

Q. Did you at anytime hear him say anything against Mr. Ramsey? A. I did not.

Q. Did you see him and Mr. Ramsey speaking together that day, or hear them speak together that day? A. I cannot say that I did; yet they may have done so; they were near together a great while. While Mr. Field was sitting at the desk, Mr. Ramsey was standing in front of him, receiving the ballots; but I heard no conversation between them.

Q. Did you see Mr. Ramsey pass through the room—from one room to the other—after the Sheriff had signified to him that he had a process against him? A. I did not see Mr. Ramsey until after the arrest had been made and the bail effected, that I remember.

By Mr. STICKNEY :

Q. From whom did you receive the order appointing you Receiver, a copy of which you presented to Mr. Groesbeck? A. I cannot say. My impression is that I got all the papers from Mr. James Appleton Morgan.

Q. Do you know what connection he had with the office of Field & Shearman? A. None. He had been a clerk with me for two or three years. I believe at that time he was a clerk of Mr. Shearman.

Q. That is your best recollection, that you received the order from him? A. Yes, sir; I think so. I will not be positive; I may be wrong.

A. And the writ of assistance, too? A. I think the Sheriff brought that.

Q. Are you sure? A. The Deputy Sheriff no; I will not be sure, but that is my best recollection.

Q. How did you happen to meet the Sheriff? A. He came to my office.

Q. Had you any knowledge that he was coming—or information? A. I do not think I had before he came.

Q. Did he bring the order appointing you Receiver? A. I think not. I think Mr. Morgan handed it to me, but I will not be positive about that. It is a good while since.

Q. Had you any knowledge or information from any one that the Sheriff was coming to your office? A. I know that I had.

Q. From whom? A. I think that came from Mr. Morgan also; I may be wrong, but it was from some of the young men in my office.

Q. Mr. Morgan was with Mr. Shearman at that time? A. I believe he was at that time. He had been a clerk for me about three or four years.

Q. Was the only direction that you had about taking the Sheriff, or about going with the Sheriff, received from Mr. Morgan, as far as you recollect? A. I had no direction, that I remember, from anybody.

Q. Was anything said to you on the subject by any one? A. There had been some general talk in my office by persons in the office. I do

not remember anybody not belonging to the office, except Mr. Morgan, whom I always consider one of my boys.

Q. Is it your best recollection that Mr. Morgan spoke to you about taking the Sheriff with you, or about going with the Sheriff? A. I do not undertake to be positive about that; I think so.

Q. You say you went to the Adirondacks on your annual visit? A. Yes, sir.

Q. Do I understand you that you were then going to the Adirondacks, or that you had been there? A. I said that I had been on an annual visit to that region, and my wife wanted to go a trip, and I took her up there.

Q. Were you then on your way to the Adirondacks, or had you been to the Adirondacks? A. I went from New York to Albany on that day, whatever it was.

Q. The 7th of September it was. Were you then on your way to the Adirondacks that morning? A. I went from New York to Albany.

Q. On your way to the Adirondacks? A. I didn't go to the Adirondacks then; I changed my plans.

Q. Your plan was to go? A. My plan then was to go on a little trip. My wife was sick, and didn't want to go any further.

Q. Did you take the stock with you intending to take it to the Adirondacks? A. I took it with me, intending to be present at that election, and see what was done there, deeming it my duty as Receiver to do so.

Q. You had no intention of voting at that time? A. I had not.

Q. Had you, before you went, any conversation with Mr. Shearman? A. Possibly, I may have had some conversation with Mr. Shearman about the election; but about the voting I do not remember.

Q. Had you any conversation with Mr. David Dudley Field before you went? A. None. I do not think I saw Mr. Field that Summer, until I saw him at Albany on the day of the election. I may have seen him in New York, but I do not remember.

Q. Do you remember your testimony given on the trial of the case of the People against the Albany and Susquehanna Railroad Company? A. I do not. I remember I testified, but I do not remember my testimony. I never saw it.

Q. I will call your attention to a few words of your testimony. A. The testimony that I gave then would probably be more accurate than now, because the events were fresher in my memory. I have not thought of them since.

Q. I will read you a few lines of your testimony on that occasion:

"Q. At whose request did you go to Albany on that occasion? A. At no one's.

"Q. Did no one speak to you on the subject before? A. Yes, sir.

"Q. Who? A. Mr. Shearman.

"A. Anybody else? A. Possibly Mr. Field; I am not clear."

Q. Do you remember now that your attention is called to it, the

testimony you then gave? A. I remember I testified, and I think that is correct.

Q. So, possibly, you may have seen Mr. David Dudley Field? A. I do not remember, now that I did. I do not think that I did.

Q. You then stated that you might possibly have done so? A. Yes, sir.

Q. So that is possible, is it not? A. I will cudgel my memory a little to answer the question. (After thought.) I do not remember now to have seen Mr. Field that Summer in New York city.

Q. I did not say in New York city. A. Or anywhere before I saw him at Albany on the day before the election. It is possible I may have done so, but I have no recollection of it, and I do not think I did.

Q. At the time you gave this testimony that I have read to you, I suppose your recollection of it was fresher than it is now? A. Naturally, although my memory is very good.

Q. So that, recalling this testimony to your mind, have you any doubt that you may have possibly seen Mr. David Dudley Field before you went to Albany? A. I do not think I saw him before I went to Albany.

Q. But you then testified that you might possibly have seen him? A. Yes, sir; and I say now I may possibly have done so, but I do not recollect, and I do not think I did.

Q. You say you had no intention until the service of the injunction upon you of voting at the election? A. I remember very distinctly, that in my own mind that morning, I had determined to have nothing to do with the election, but simply to be there and watch. I remember now, with perfect distinctness, that I had it my mind that morning not to vote upon this stock.

Q. Do you remember what ticket you actually did vote? A. I voted the ticket on which was Walter S. Church for one of the Trustees.

Q. Directors, you mean? A. Directors.

Q. Mr. Fisk was another? A. I believe so.

Q. Mr. Gould was another? A. I think so. It was the Church ticket.

Q. It has been called the Church ticket by some people. Who gave you that ticket? A. Mr. Shearman. I had tickets from both sides; I will state—

Q. You didn't vote both sides? A. No.

Q. At what time did you receive that ticket from Mr. Shearman? A. About the time I voted, I think—wait, I am not sure about that. I think I got the tickets that morning at the Delavan House.

Q. Where? A. The Delavan House.

Q. Where in the Delavan House? A. I think at the breakfast table, or it may be in Mr. Shearman's room; I do not remember.

Q. It might have been in Mr. Shearman's room? A. Possibly.

Q. With whom did you breakfast? A. With my wife.

Q. With whom else? A. Mr. Shearman. I saw him, and took a seat by him..

Q. Do you mean that Mr. Shearman gave you the opposing ticket?
A. I did not say so.

Q. I understood that you got your tickets at the Delavan House, at the breakfast-table, or in Mr. Shearman's room?

Mr. CURTIS:

He said he got tickets.

Q. I ask you if Mr. Shearman gave you a ticket of the Ramsey party? A. I do not know. I do not know who gave them to me. They were as plenty as blackberries.

Q. Did you get any but the Fisk tickets at the breakfast-table, at the Delavan House, that morning? A. I rather think I did.

Q. From Mr. Shearman? A. Or in his room; I don't remember about that.

Q. Do you think it probable that he had tickets in his room of the Ramsey Board? A. I think it very probable. If I were in his place, I should have had them if I could get them. If I had been counsel I should have the adversary's tickets if I could get them.

Q. Did you read this injunction yourself? A. I did.

Q. Mr. Shearman, you say, advised you to vote? A. He requested me to vote and advised me to vote.

Q. Why did you not divide your vote? Would not that have answered the requisition of the injunction? A. I voted for what I thought to be the best ticket. I didn't divide my vote, because I had seen evidence of what you call the Ramsey party having stolen the books of the corporation and removed them from the jurisdiction of the State, and I didn't believe such men to be fit men to be trusted with the control of that road.

Q. You have no knowledge of your own on that point? A. I had seen the papers published in the *New York Times*.

Q. Have you any other knowledge? A. I think Mr. Shearman showed me the original affidavit.

Q. Had you any other knowledge? A. No; that was enough to satisfy a reasonable mind.

Q. You had heard nothing from the Ramsey side on that subject? A. I had seen Mr. Ramsey's affidavits.

Q. Do you remember that he denied having stolen the books? A. I think that he admitted that he took them. I forget about this—I forget about what the fact was.

Q. You are not certain, are you? A. I am certain of this, that I was satisfied by what I considered competent evidence, that the Ramsey party had stolen the books of this corporation, and removed them from the jurisdiction of the State.

Q. Did the Court finally agree with you on that point? A. I do not know. I believe so. I do not know about that. I have not seen the judgment of the Court, but the judgment of the Court—

Q. Have you any information on that point? A. The judgment of the Court would not affect my opinion.

Q. Undoubtedly. I only wished to test your knowledge. A. I think I know about as much about that fact as the Court who decided it.

Q. Do you know whether the Court agreed with you on that point? A. They had been carried out of the State.

Q. That does not answer my question. A. I do not know what the judgment of the Court was, but according to my recollection of it, it stated that they had been taken out of the State. I have never read the judgment of the Court, except in a newspaper way. I consider it to be an unjust judgment from my knowledge of the facts.

Q. Do you know whether or not it was affirmed at General Term? A. Yes, sir; and I believe it will be reversed in the Court of Appeals whenever it is argued there.

Q. It was affirmed in General Term? A. In part, I understood, but not the whole.

Q. You say that you did read the injunction that was served after you arrived, and that, after that, Mr. Shearman advised you to vote? A. That is my recollection. I don't know whether I read the whole injunction, but I think I read the restraining part.

Q. It was the injunction in the suit of David Groesbeck against James Fisk, and others? A. I am sure I don't know about that.

Q. Look at it, and see. A. I cannot tell by looking at it. If you will show me the restraining part of the injunction, I can, perhaps, tell.

Q. The copy I showed you is the printed copy of the case, prepared in the office of Messrs. Field & Shearman, in the suit of the People against The Susquehanna Railroad Company, and others? A. (After reading.) I remember reading that part of it.

Q. That is your best recollection? A. I do not pretend to remember the papers after this lapse of time. I remember the facts. I remember that Mr. Shearman showed me an injunction, which he said had been served, and which restrained or prevented any election, unless the holders—

Q. Read the language there. A. What do you want me to read?

Q. From the word "unless." A. "Unless the said plaintiffs and the 'other holders of said 3,000 shares of stock, and every portion thereof, 'shall have first have had opportunity to vote upon all the shares.'"

Q. You left out the word "plaintiffs,"—I do not mean by any intention to do so. A. When?

Q. When you were stating the purport of the injunction order. A. I am not aware that I stated the purport of the injunction order.

Q. I understood you to say that it enjoined the election unless the holders of that stock were allowed to vote? A. Yes, sir.

Q. And the injunction actually reads, "Unless the plaintiffs and 'the other holders;'" the plaintiffs in this suit were David Groesbeck and others, were they not? A. I do not know; I do not know

that that is the injunction in that suit; I believe that is the injunction in the suit.

Q. In that copy of the injunction, David Groesbeck and others are the plaintiffs, are they not? A. They are there; I do not think I read any more of this injunction than—I took Mr. Shearman's statement that the injunction which he showed me, as I have stated to you, was, unless the holders of that stock voted, there could not be any election.

Q. You didn't examine to see who the persons were who were the plaintiffs in that order? A. I did not; things were too lively about that time, to stop to read long papers.

Q. They were lively, were they? A. Very lively.

Q. Some things took place that might possibly have escaped your notice? A. I think not, as to the facts; I am a pretty close observer; I voted on the stock.

Q. For Mr. Fisk? A. I didn't vote for Mr. Fisk or Mr. Gould; I voted for that ticket; I voted for them as Trustees.

Q. Were they on the ticket? A. Yes, sir; and under the same circumstances, to-morrow, I should do the same thing; I did it then without reflection, but upon reflection, I am satisfied I did right.

Q. From your estimate of the character of Mr. Fisk and Mr. Gould and the other members? A. From my estimate of the character of Mr. Church, a man I knew; Mr. Fisk I never saw until that morning, and Mr. Gould I never saw; I am not in the habit of condemning men upon mere newspaper testimony; I think that ticket was the better of the two; I thought so then, and I think so now.

Q. You had a positive opinion that Mr. Fisk and Mr. Gould and the other gentlemen were the best men? A. I had a positive opinion that that ticket was the best ticket, and that the men on the ticket were the best men.

Q. They were on the ticket? A. I believe they were on the ticket; they were better than Ramsey and Groesbeck, in my judgment.

Q. Do you know Mr. J. A. Morgan? A. Yes, sir.

Q. Where is he? A. At Langham's Hotel, London.

Q. The process of this Committee would not reach him? A. Not easily.

By Mr. CURTIS:

Q. If Mr. David Groesbeck was by, or one of the plaintiffs in that action in which Judge Clute's injunction was issued, he could not have voted on that stock as a holder of it at that time? A. No, sir.

Q. There was no holder, was there, but yourself? A. No, sir.

Q. So that if you had not voted, the stock could not have been voted on at all? A. Not legally, in my judgment.

Q. Have you practised much before Judge Barnard? A. Yes, sir, I have; since he has been on the Bench, I have had, I suppose, on my register, an average of over a hundred cases a year, and I suppose one-quarter of those cases have been in the Supreme Court.

Q. You have had many cases and motions in his Court decided

against you, by him? A. Yes, sir; in Chambers, Special Term, and Circuit.

Q. Have you ever had reason to complain of any decision of his against you, being rendered by undue favoritism toward your adversary? A. Never; candor compels me to say that; though Judge Barnard has decided oftener against me than he has for me, he has been right.

Q. You mean that he has been generally right in his decisions? A. In my cases.

Q. Although they have been against you? A. Yes, sir.

Q. Have you ever heard any one accuse Judge Barnard with any specification of circumstance, time, or place, of any kind of pecuniary corruption? A. No, sir; I have heard common talk of it in a general way.

Q. Have you seen much newspaper abuse and insinuation? A. Cords of it.

Q. Against him? A. Yes, sir.

DENNIS McMAHON, a witness, being duly sworn, testifies:

By Mr. ANDREWS:

Q. You are a counsellor at law? A. Yes, sir.

Q. How many years have you been in practice in this city—in active practice? A. Twenty-six years.

Q. You practice in all the Courts, do you not? A. Yes, sir.

Q. In the United States and State Courts? A. Yes, sir.

Q. Do you recollect of a case in the Supreme Court Chambers, before Judge Barnard, in February, the title of which, as stated in these minutes, was Baddy against Eagan? A. I argued a motion to discharge Gen. Eagan from arrest, in the case of Waddy against Eagan.

Q. What was that case, as far as you were concerned with it? A. It was a motion to discharge Gen. Eagan from arrest, or to mitigate his bail. He was arrested on the ground of having fraudulently contracted a debt. The defense, set upon to the debt, was that it was a sum of money loaned in a gaming house in Baltimore, and that the debt was *contra bonos mores*.

Q. You sought to have what done? A. I sought to have the bail mitigated, and to have him discharged. The ground of the motion was that he had been in jail for several weeks, in the portion set apart as the poor debtor's prison, and was totally unable to find bail, and had not a cent of money. The jailor sent me word that he would have to be sent to the hospital, because he was sick and was liable to be demented; that he dressed himself in his coat and sat in his room, and would not go out, and was waiting for his discharge; and that his mind was becoming affected.

Q. Do you remember anything about the history of Gen. Eagan? A. Yes, sir; he was a brave and gallant soldier in our war. He went in as a Lieutenant and came out as a Major-General by brevet. He

fought in all the leading battles in the Army of the Potomac, and was a very meritorious officer.

Q. On that occasion did you hear Judge Barnard make any such remark as this: "I tell you what there is about this thing; he borrowed 'this money in Baltimore to play pharaoh with.'" Did you hear him make any such pronunciation as pharaoh? A. No, sir; I can give you a history of the motion.

Q. Give us that. A. I made a motion stating the circumstance of calling for the action of the Court for a mitigation of bail, or for his discharge. Mr. Harrison appeared for the defendant, and opposed the discharge.

Q. Who was Mr. Harrison? A. Mr. B. M. Harrison.

Q. Formerly the private secretary of Jefferson Davis? A. Yes, sir, I appealed to Mr. Harrison that he ought not to oppose the discharge of Gen. Egan, because it was one soldier opposing the discharge of another soldier. But he opposed his discharge. I pressed very strongly upon the Judge the fact of the miserable state in which Gen. Egan was, and told him how I had appeared in the case; that I had not received a cent of fee; I had made this motion from a sense of charity and sympathy for him. However, Mr. Harrison opposed the motion. Judge Barnard turned to Mr. Harrison and said to him: "Counsellor, take nothing from nothing and what is left? This man is 'here in jail and has no money, and he cannot get bail; if you let him 'out he will earn the money and pay you.'" Some discussion ensued, and it ended in the bail being reduced to a hundred dollars. Mr. Harrison said that he would like to have his note, and the Judge said that he would order his note to be given if he desired his note as a condition. I suggested that Mr. Harrison's client bail him out, so that he might surrender him up at any time he saw fit. Those are about the facts.

Q. It is stated by a witness in this proceeding that the counsel for the plaintiffs replied, "Judge, the amount of it is, this man is a good 'natured gambler;" and that Judge Barnard said, "I think it would be better to let him out, and let him go to gambling again?" A. Not that I heard. There was a man who sat beside me or behind me, who appeared to be a little under the influence of liquor, and who made remarks that were overheard, but I heard no such remark from the Judge.

Q. Probably the reporter must have taken that remark for the remark of the Judge? A. The only remark which I have seen reported of the Judge, was what I saw in the newspapers. This person kept whispering in my ear loud so that people could hear.

Q. The counsel remarked: "I do not see how your Honor has power 'to do that; all the other Justices have held that a Judge has not that 'power, but Judge Barnard replied: 'Yes, I have;' if you had three thousand Judges to the contrary.'" A. I did not hear that.

Q. Would you have heard it, if the Judge had made such a remark? A. My attention was directed to the case, and I was pressing upon the Judge when I saw that his mind was wavering as to how he would

decide it ; that the other side might bail him out, and surrender him at any time if he did not pay his debt.

Q. Do you recollect whether I (Mr. Andrews) was sitting upon the Bench at the time by the side of the Judge? A. I have a faint recollection of it.

Q. Then this expression is said to have been used : " What becomes of our claim after he gets out?" That was the remark of Mr. Harrison. Then Judge Barnard is reported to have said : " You can put him back again." Was not that in answer to your proposition to have the plaintiff bail him himself? A. Yes, sir ; it must have been. There appeared to be a conflict in the Judge's mind in answer to my sympathetic argument and desire of the counsel to get a note, or to get some remedy out of the man, so that if he came out he would earn the money and pay him ; then, as I suggested, that the plaintiff's counsel might furnish bail and surrender him at any time, if he did not pay the note.

Q. Did Judge Barnard, on that occasion, use this expression—I think he did—and I will ask you the question : " I am going to reduce the bail, on the ground that nothing from nothing leaves nothing, and if he has got nothing and cannot earn anything in jail, it does no good to you. The trouble with him, he has got among gamblers and has got beaten." A. I have said that in a portion of my testimony ; that corresponds with my recollection ; those words made a very great impression upon my mind, and struck me with a good deal of amusement, so that, when I got back to my office, I related the occurrence ; they were delivered in a kind tone in answer to the argument I presented. I was somewhat forcible in presenting the fact that he was a brave soldier, who was in the position of Bellisarius asking for an obolus.

Q. The next expression alleged to have been used is this, by Mr. Harrison : " If the bail is reduced, I ask that he be ordered to give us the security of a note as he has promised us." Then Judge Barnard is reported to have said : " Yes, he may give that if it will do you any good ; I know a good many men in New York who would give you their note for a hundred thousand dollars, if you would give three cents for it." (Laughter). Did you hear any such remark as that? A. He asked for a note. A note was suggested ; whether I suggested or not, I do not know ; it was acceded to. As to the remark of a note for a hundred thousand dollars for three cents, I do not recollect—I do not know about ; I think it was the Judge's intention to order the man to give the note ; I drew up an order, but Mr. Harrison amended it, so as to reduce the bail to a hundred dollars, and Eagan got out without giving a note.

Q. Did you hear any such expression as this : " You can follow him around when he goes to these places playing pharaoh (pronouncing it pharao)"? A. There was no such word as pharo used by him, or faro, that I know of. As I said, there was a man behind me who was whispering in my ear, and who appeared to be a little under the influence of liquor ; who whispered audibly, and possibly such a thing might have come from him ; I do not say it was so ; I heard nothing of the kind.

By Mr. VAN COTT:

Q. How long were you in Court before you were heard in that case?
A. A very few minutes; I think there were only two cases on the calendar that day. It was on Monday morning, either the 12th or 13th of February.

Q. How long did you remain before Judge Barnard had passed upon your motion? A. We sat down and drew the order. There was time enough to draw the order and have amendments, and have it settled and signed.

Q. Can you repeat anything that was said in Court, before your motion was heard, by Judge Barnard or any other person? A. No, sir.

Q. Can you repeat anything that was said in Court, after your motion had been passed upon, while you were drawing the order and waiting for its settlement? A. No, sir; nothing that I think of.

Q. The stimulated gentleman who sat by you—did he use this expression: "I will tell you what there is about this thing: he borrowed this money in Baltimore to play pharaoh with?" A. I presented that argument, as I recollect, why the order of arrest should not be held.

Q. I ask whether the stimulated gentleman who sat by you used that expression? A. I cannot say. I presented the argument.

Q. Did you use that expression? A. I said substantially that the order of arrest should not be held. I may not have used directly that language.

Q. Will you say whether the gentleman who sat by you used it? A. There was some one sitting behind me, or near my ear, bending forward.

Q. Did he use that expression? A. I heard none such, as I said before, either pharaoh or faro.

Q. Did the gentleman who sat near you, and who was in his cups use this expression: "I think it would be better to let him out and let him go to gambling again?" A. As I said before, there was some person who made use of the remark of that kind behind me.

Q. Your answer is in the affirmative, according to your best impression? A. Yes, sir.

Q. That he used that? A. Yes, sir. The question I was asked was whether Judge Barnard said that, and I said "no."

Mr. ANDREWS:

He said that Judge Barnard did not say it.

Mr. VAN COTT:

I am cross-examining the witness. They have undertaken to transfer the honors of this occasion to some other gentleman.

Q. Did that person use that expression I have read: "I think it will be better to let him out, and let him go to gambling again." A. He did not use that expression in that language, but some one behind me, who, I suppose, was under the influence of liquor, made a remark

to that effect, "He will go to gambling again," or "He will earn it by gambling again."

Q. Did the person you refer to use this expression: "The amount of it is this, the man is a good-natured gambler?" A. I do not recollect that statement. It is stated in the report as having been used by Mr. Harrison. I do not recollect Mr. Harrison using that expression.

Q. How recently did you read the report? A. While in the Supreme Court in Washington, I saw it there, and read it.

Q. In what paper? A. In one of the New York papers.

Q. Did the man sitting near you use this expression, "I think it would be better to let him out, and let him go to gambling again?" A. I do not think he used that expression in that sense or in that way. He made the remark, as I said, "Let him out, and he will go to gambling again."

Q. Were these remarks, whatever they were, loud enough for the counsel sitting and taking part in this argument to hear them? A. I heard them quite audibly.

Q. You think they could have been heard by any one in the Court-room? A. I think they could have been heard by any one on the circle of the table.

Q. Considerable amusement was made by these remarks, whoever made them? A. There was some jocoseness.

Q. Laughter in Court, whoever made them, when they were made? A. That in connection with Judge Barnard's remarks to Mr. Harrison. He said, "Counsellor, take nothing from nothing and nothing remains. This man, as long as he is in jail, can earn nothing; if you let him out he will be able to earn some money." Our friend in his cups who was behind me interjected something, and the whole thing created a little amusement—so much so that I related the occurrence when I got to my office.

Q. Did Judge Barnard interfere with this rivalry between himself and the gentleman near you? A. I do not know that there was any rivalry between them. I do not know that the gentleman spoke loud enough for Judge Barnard to hear him.

Q. You think he spoke loud enough for other gentlemen in the Court to hear him—counsel engaged in the case? A. I heard him because he was behind my ear.

Q. You heard no complaint made by the Court, or interference by the Court, for anything that was said that caused laughter in the Court? A. I cannot say that I heard the gentleman quieted, nor was I quieted, nor was Mr. Harrison quieted.

Q. You have been very frequently before Judge Barnard, have you not, at Chambers? A. Yes, sir.

Q. It is a very unusual thing, is it not, for Judge Barnard to make ludicrous remarks and excite laughter by his observations from the Bench? A. That is a matter of taste.

Q. It is not a matter of taste; it is a matter of fact. Whether it is

an unusual thing is my question? A. I thought your question was—

Q. An unusual thing? A. He does make ludicrous remarks, undoubtedly, or jocose remarks rather.

Q. Is it not a very common thing during his sitting at Chambers that there is laughter going on in Court—loud laughter? A. His remarks sometimes excite laughter, undoubtedly.

Q. You never heard him make use of indelicate, indecorous or undignified expressions on the Bench, did you. A. I never heard him make use of indelicate expressions. The question of their being undignified, as I said before, is a matter of taste.

Q. I want to see what your taste on that subject is. There is a difference in taste among gentlemen, unquestionably. A. I. was brought up under a severe school—the old school—and before the leveling influence of popular elections had affected judicial decorum; and in some respects my tastes would be at variance with what has occurred. I do not single out Judge Barnard in that particularly.

Q. You mean that Judge Ingraham is extremely humorous sometimes? A. I do not say particularly about Judge Ingraham.

Q. Judge Cardozo? A. I do not single him out. I think, under the levelling influence of popular election, our judiciary are not as decorous as they were when I commenced practice, or you did either?

Mr. PARSONS:

Or Mr. Curtis?

Mr. VAN COTT:

Single out the other gentlemen; not me.

Mr. ANDREWS:

Don't count me in that. A. I tried a case in the month of June, in Brooklyn.

Mr. VAN COTT:

Leave that out, for I live in the Second District.

The WITNESS:

The Judge spent half an hour reading a newspaper, and I think that was exceedingly unbecoming.

Mr. VAN COTT:

He was probably reading one of Mr. Curtis' articles.

Mr. ANDREWS:

Or, probably, he was reading the jokes that appear in the *Tribune*.

Q. I ask whether it is an uncommon thing for you to hear indecorous and undignified remarks from the Bench, by Judge Barnard, exciting considerable merriment in the Court room? A. I could not say indecorous, but I suppose that Judge Barnard, like a great many other men, cannot avoid a joke when it springs up to his mind. He will occasion-

ally make use of jokes which will excite merriment among those that like those things. I do not like them.

Q. Can you repeat a single remark of that character which I characterized as indecorous or undignified, made by Judge Barnard on the Bench? A. I cannot call them to mind now.

Q. You cannot repeat a single expression of his since you have been in practice before him for how many years? A. Judge Barnard commenced as a Judge of the Supreme Court in 1860, and I have practiced more or less before him since 1860. Your question is very general, and will require thought to answer. There have been times when things have not gone to my taste according to my taste—but I cannot single him out.

Q. You say they have not gone according to your taste. Don't you think your taste is that of decent people who feel concerned for the administration of justice? A. This remark—

Q. Excuse me, I would rather have an answer. A. I can give it in this way, for illustration; this remark: "You take nothing from nothing, and nothing remains," is not according to severe judicial professional taste, but it was said in such a kind spirit, and as a reason to Mr. Harrison, that I related it afterwards as an instance showing the kindness of his heart. Then again, I have sometimes heard him make use of witticisms, and I have no doubt in cases I have had before him he has made use of remarks that occurred to his mind, and he could not restrain himself, and it does come out, and excites to laughter, but nothing to hurt the feelings of any one, or to hurt my own feelings.

Q. Do you think "take nothing from nothing, and nothing remains" is calculated to wound any sense of decency? A. No, sir; but it is not according to the severe standard of judicial decorum.

Q. That is a strictly logical formula, is it not? A. Yes, sir; but it is not in accordance with the strict judicial taste; still it was appropriate to the occasion, and with the circumstances under which it was delivered, and the tone in which it was delivered, was entirely proper, but not according to my idea of a strict judicial taste.

Q. My question is, whether the exception taken by your taste to the course of observations of Judge Barnard on the Bench exciting loud merriment in his Court, is not the common taste of decent people interested in a proper and dignified administration of justice? A. Your question assumes two or three facts which I have not acceded to.

Mr. VAN COTT:

Excuse me, I think we have all acceded to that.

Mr. ANDREWS:

I think you have assumed things the witness has not said.

Mr. VAN COTT:

I assume that he expressed the fact that remarks have been made by Judge Barnard that are in dissonance with his taste, and I ask if his exceptions taken by his own taste, to the course of observation of Judge

Barnard on the Bench, making remarks which caused loud merriment, is or is not the taste of decent people interested in the proper and dignified administration of justice? A. That is a question, of course, that every man must settle for himself.

Mr. VAN COTT:

I accept that as an answer; that is all.

By Mr. ANDREWS:

Q. Did you practice before Judge Roosevelt when he sat upon the bench at Chambers? A. Yes, sir.

Q. Was not Judge Roosevelt in the habit of getting off jokes which set the whole Court room to laughing? A. Yes, sir. His manner was exceedingly offensive to the Bar.

Q. Was he not even more accustomed to it than Judge Barnard? A. I would not like to state that.

Q. Was he not as much so? A. I never admired Judge Roosevelt.

Q. I mean, in that particular, was he not quite as much as Judge Barnard? A. I could not say quite as much as Judge Barnard. I did not mean to make any comparison between the two, but his manner, at times, was offensive.

Q. Didn't he frequently make remarks that created loud laughter in Court? A. Yes; that is so.

By Mr. VAN COTT:

Q. Was not Judge Roosevelt's humor a very dry humor? A. Yes, sir.

Q. Is not Judge Barnard's of the very opposite character? A. What would be the opposite—soft humor? It is pungent, dry, or soft—pungent would be better.

By Mr. CURTIS:

Q. Did you ever practice before Judge Grier, late Judge of the United States Court? A. Yes, sir; I argued a case before him, and the first thing—if you want to ask me about him—

Q. Was he not a Judge of great ability, great usefulness, and great respectability? A. Yes, sir.

Q. Was not his integrity universally conceded? A. I believe so.

Q. Was he not in the habit of saying the most grotesque things on the Bench? A. I can only give you my experience. I argued a case before the Bench of the Supreme Court, and the first thing Judge Grier did, when my points were handed up, he took them up in this way, opening one leaf after another, and threw it down in the most insulting manner. That is my experience with Judge Grier.

Q. I speak of practice at Circuit—did you ever practice before him at Circuit? A. No, sir.

Q. You never heard of his getting off jokes at Circuit? A. No, sir.

By Mr. ANDREWS:

Q. Have you ever tried a case before Judge Grover, now of the Court of Appeals? A. Yes, sir.

Q. Have you ever heard him make jokes? A. I believe he is quite famous for that.

Q. Do you know that he ever does it now on the Court of Appeals Bench? A. I argued a case before him in the month of December last, and while arguing it, I was in a continuous battle with him. He differed with me on every thing.

Q. Does he not speak in a way to create laughter in Court? A. He has a peculiar voice that would create laughter.

Q. And manner and expression? A. Yes, sir; but those who are not accustomed to him, and do not think as much of him as I do, would be immediately overawed and put down. In this case I speak of we had a sparring and combat during the whole. I thought he was very much against me, but I finally succeeded in the case.

By Mr. VAN COTT:

Q. You say you heard the integrity of Judge Grier universally approved; is that so? A. Yes, sir.

Q. Have you heard the integrity of Judge Barnard universally approved? A. As far as I know about Judge Barnard's integrity, I know—

By Mr. PRINCE:

That is not the question.

Q. The question I ask is whether you have heard it universally approved? A. I have read a great many newspaper assaults on Judge Barnard's integrity, and every thing else, if that is what you want to know.

Q. Not only what you have read, but what you have heard. Have you heard it universally approved? A. I do not know as I have heard it discussed in a way as to involve an answer to your question. I have read attacks in the newspapers about Judge Barnard. I have read a pamphlet, published concerning Judge Barnard, and I have read a good many that appeared in the public prints concerning Judge Barnard. Now you ask me if I have heard it universally approved. I cannot say that I have heard it universally approved in the face of what I have read.

Q. In the face of what you have heard as well as what you have read? A. It would be difficult for me to answer that, because I have not been engaged in cases that involved the discussion of his integrity.

Q. Do you not hear the question of his judicial integrity discussed in particular cases in which you are not concerned as counsel or party? A. The question as to whether Judge Barnard is a man of integrity has not come under discussion in cases I have had before him. I am not a member of the Law Association, the reports of which I have read in the papers, and therefore I have not had the pleasure of hearing those discussions, if it is a pleasure.

Q. I want an answer to this question—if you have not heard the character of Judge Barnard spoken of for judicial integrity. A. Yes, sir.

Q. Was it favorably or unfavorably discussed? A. I have heard it discussed on both sides warmly.

Q. You have heard it spoken warmly in favor of and warmly against?

A. Yes, sir.

Q. Both? A. Yes, sir.

Q. Did you hear the character of Judge Grier warmly spoken in favor of and warmly against? A. I have heard Judge Grier spoken very hardly against. I have heard people say he was "a damned hog."

Q. Did you think that affected his judicial integrity? A. Yes, it does, because integrity includes demeanor as well as honesty.

Q. Then as integrity includes demeanor as well as honesty, what is the opinion you have heard expressed of Judge Barnard's judicial integrity, as you thus define it? A. If you wish to distinguish the comments upon integrity with reference to the manner, I can give you an answer.

Q. Distinguish it just as your definition distinguishes it? A. Take it upon the basis of my definition. As I said before, I have read articles in the newspapers in regard to Judge Barnard's integrity, and I have heard it discussed both for and against, but I have never yet found a man who could put his finger on a single instance where he had received a dollar corruptly. He is no favorite of mine. I was brought here because I was subpoenaed, having been counsel on that motion. But I know of no instance, nor can I put my finger upon a single point, of any corruption in the shape of pecuniary corruption. But if you wish, in respect to integrity, to take the other phase of my definition as characterized by manner, I have heard discussions upon that subject on both sides. I have heard people speak against his manner, and I have heard others speak in the most favorable way of his kindness of heart. I will give you another illustration. I have heard people say that he has referred references—

Q. I do not think it is sufficiently important to pursue this matter further. A. I will finish this answer, and then I will stop. I have heard people say that he has made references to his brother-in-law. I made motions one time in five references, and he denied every one of them. It was at the time when lawyers said that "all you have to do is to make the motion before Judge Barnard."

Q. The references were opposed, were they not? A. Yes, sir.

Q. And Judge Barnard decided that they were not proper cases for reference? A. Yes, sir.

MARTIN L. TOWNSEND, a witness, being duly sworn, testifies:

By Mr. PARSONS:

Q. You are a member of the firm of Townsend, Levinger & Waldeheimer? A. Yes, sir.

Q. Were your firm the plaintiffs attorneys in the suit of Steinhardt against Funk? A. Yes, sir.

Q. Is Mr. Adolph Levinger a member of your firm? A. Yes, sir; he is.

Q. How long has your firm been established with Mr. Levinger as a member? A. Our present firm of Townsend, Levinger & Waldheimer has been in existence for about two years; but Mr. Levinger and myself have been partners previous to that for about twelve years.

Q. How long has Mr. Levinger been a member of the Bar? A. I should say twelve or fourteen years.

Q. Has Mr. Levinger been a member of the Assembly. A. He has.

Q. Was it Mr. Levinger or yourself who made an application to Judge Barnard for an injunction in the case of Steinhardt against Funk? A. We both of us went together to the Chambers, but I personally made the application.

Q. Could you induce Judge Barnard to examine the papers? A. I should prefer to state it in my own way.

Q. Please to do so. A. I went in with the papers in company with Mr. Levinger to Chambers, and I immediately handed up the papers to the officer, who handed them up to Judge Barnard. They were handed up, and when he reached them in the ordinary course of business, I, myself, called his attention to the nature of the application, and stated that it was an application for an injunction to restrain the defendant from taking the personal property and effects out of Irving Hall. He interrupted me in the course of my remarks by saying: "Do you want to get an injunction to stop a man from going into your premises and taking property out?" I said: "That is substantially what we want." He replied: "I will not grant any injunction for that purpose. If a man comes to take your property out, kick him out." I thereupon said that my client was a little timid, and might get into trouble by the operation, whereupon he said, "Call in the police." He immediately handed the papers back to the officer, who returned them to me. It occurred to me that something was wrong, and that I would wait a moment, and see if I could not renew the application, and get him to grant the injunction. I waited a few moments until there was a little lull in the *ex parte* business, and I then arose and stated to the Judge that I hoped he would excuse me for pressing the matter upon him, but I thought it was a proper case for an injunction, and if he would examine the papers, or allow me to state the contents, I thought he would see it was a proper case to allow an injunction. He replied: "Counsellor, you may talk as long as you please, but I have decided that matter, and I am not going to grant an injunction in that case." I said, "Will you not take the papers and examine them?" He said: "No. I have decided the matter; I am not going to grant an injunction." I left the Court-room with Mr. Levinger and our client, Mr. Steinhardt, who was there present.

Q. Where was Mr. Steinhardt during this colloquy between Judge Barnard and yourself? A. He was standing somewhere in the Chambers, I should say, near the door. I was standing myself near the Bench.

Q. Was Mr. Steinhardt where he could see who it was that made the application? A. Certainly.

Q. Were you privy to the conversation between Mr. Steinhardt and Mr. Levinger subsequently, when Mr. Levinger gave Mr. Steinhardt the papers for the purpose of having the injunction obtained from Judge Barnard? A. I heard substantially all that was said. We had a case on trial up stairs before Judge Larremore, which had been adjourned over. It was almost eleven o'clock. We had the case on trial, and we were getting ready to go up there.

Q. Did Mr. Steinhardt make any statement to Mr. Levinger of his incompetency, or say anything about his not knowing anything about the law more than a shoemaker, or anything to that effect? A. Not at all; no intimation of that sort.

Q. There was no fault found? A. No fault found either with Mr. Levinger or myself, either as to our ability to prepare or to present the application.

Q. When the injunction was granted by Judge Barnard, did Mr. Steinhardt return the papers to your office? A. I cannot say that, because I do not know when they were granted. I know I was busy that day, and didn't return to my office until late in the afternoon. The next morning, on going to my office, I found the papers there.

Q. Brought back to Mr. Levinger? A. With the injunction granted; I do not know whether he brought them to him.

Q. The suit remained in your office until the present time? A. Until the present time.

Q. Has Mr. Steinhardt been there in reference to it? A. Yes, sir; special proceedings have been had since in the nature of the examination of Mr. Steinhardt as a witness upon an order obtained upon the alleged ground that he refused to make his affidavit, and we have been before the Referees ever since.

Q. Without any complaint from Mr. Steinhardt of the pretended incompetency of Mr. Levinger? A. No complaint until what I saw in the papers the other day in regard to his testimony.

By Mr. ANDREWS:

Q. Is Mr. Steinhardt now a client of yours? A. Until yesterday, when, upon seeing the testimony he gave, I declined to have anything more to do with the case, and refused to argue the motion.

Q. Did you take the newspaper report of what he testified to govern your action in reference to refusing to have anything more to do with the case? A. I did. I sent for him to come to the office, and had a talk with him, and after the conversation with him declined to have anything further to do with the case.

Q. He adhered to what he had said here on the stand, when you had your conversation with him? A. No; he completely denied the newspaper report.

Q. What was the difference between you that led to your declining the case if he denied the newspaper report? A. I asked him to make a statement of what he did say, and if the newspaper reports were not correct to sign his name to the denial, but he declined to do it, and upon that I told him I could not go any further with the case.

By Mr. PARSONS :

Q. How long have you been at the Bar yourself? A. About nineteen years, I think.

Q. You have been practising somewhat prominently in the Courts?
A. Somewhat so.

JONATHAN R. HERRICK, a witness, being duly sworn, testifies :

By Mr. CURTIS :

Q. In 1869 were you Vice-President of the Albany and Susquehanna Railroad Company? A. I was.

Q. Were you present, together with any other Director or Directors, at an interview with Mr. Jay Gould in this city, at which an application was made to him to assist in purchasing, or making arrangements for purchasing, stock preparatory to the election? A. No, sir.

Q. Were you not present at all at it? A. I was not.

Q. Do you know, from any statement made to you at the time from any of your fellow Directors, whether there was such an interview?
A. I heard from four of them that there was.

Q. That they came to New York for that purpose? A. Yes, sir.

Q. Do you know of any conspiracy between Mr. Gould and Mr. Fisk, and any other person or persons, to improperly or wrongfully get possession and control of that road against the wishes of a majority of its stockholders? A. I do not.

Q. Were you present at the election? A. I was.

Q. Will you state whether, besides the persons whose names were known to you, and who were there acting on the Ramsey side, there were any, and what number, of persons whose names were not known to you, there acting on the same side? A. There were some not known to me.

Q. I mean when the stockholders' meeting was first organized?
A. The day of the election do you refer to?

Q. Yes, sir. A. There may have been twenty-five; I am not positive as to the number.

Q. What character of people were they? A. Many of them were evidently of the working class.

Q. Any others of any other description? A. There were others, so far as I could judge, very respectable in their appearance, well dressed, and gentlemanly in their deportment.

Q. Were you present when Mr. Ramsey was put under arrest by the Sheriff? A. I was not.

Q. Or Mr. Smith? A. Neither of them. I was in the building, I understand, but not in the room.

Q. Which of the two parties to the contest for the control of that road had the preponderance of stock? A. The anti-Ramsey party.

Q. Do you know anything about the removal of the books and papers of the Company from the office of the Company, when it occurred, and where they were taken. A. I hardly know how to answer that.

I learned from the Treasurer, upon whom I called, that the books had been taken away, but he declined to say that he knew anything as to where they had been taken, or by whom they had been taken.

Q. Did the other Directors take any steps to follow them, or to ascertain where they were? A. We did.

Q. What steps? A. Mr. Leonard, Mr. Conway, and myself, went to Pittsfield, learning they were there.

Q. Pittsfield, Massachusetts? A. Pittsfield, Massachusetts; having learned from good authority, as we supposed, that they were concealed in or near the American Hotel.

Q. What occurred there? Did you find them there? A. We did not.

Mr. STICKNEY :

How is this connected with Judge Barnard?

The WITNESS :

After conversing with the landlord, he gave us to understand that the books were not then in his possession, but that he knew where they were, and had access to them, or could get access to them. Then I consulted Mr. Dawes, and he advised the procuring of a writ of replevin, if I recollect rightly. I think the necessary steps were taken to get it, but I do not know as we did get it. We then learned that we could not force open any safe. Mr. ———, I cannot call the name of the hotel-keeper, intimated that there was a third party, and if a certain sum were paid, the books could be reached. I consulted with my friends who were with me, and I thought it was hardly advisable, without returning to Albany, to agree to pay the sum named.

Q. Did you make an affidavit, in the course of some of the litigations that took place that grew out of these occurrences, in respect to any matters concerned? A. I did.

Q. What was your affidavit made in reference to? A. My impression now is that it was in relation to getting an order to obtain the books. That is the one I recollect now of, and I think another one was in relation to obtaining an order for obtaining the books.

Q. Have you recently read those affidavits or seen them? A. I think not.

Q. I understood you to say that you made an affidavit. Was that affidavit made in the case of the Albany and Susquehanna Railroad Company against Ramsey? A. My impression now is, it was.

Q. For what purpose was it made? A. My impression now is, in relation to obtaining an order to obtain the books.

Q. Will you please look at what purports to be a copy of that affidavit in the book now shown you, and look at it carefully, and state whether it is or is not a correct copy of the affidavit you made in that case? A. (After examining.) I think it is, substantially.

Q. After reading this affidavit, are you now able to re-affirm, under oath, the statements that are made in it? A. With a single exception, so far as I recollect. I think it states that I swore positively as to Mr.

Morgan's arrival at Albany, on a certain night, very late. That I only know from hearsay. I was there at a very late hour, and he was expected there that night, and he had not come at midnight. The next morning I learned that he had come. In every other respect it is *verbatim*. It states that I swore positively to that. I do not think I did.

(The affidavit is marked as an exhibit, Charge 2, F 1.)

Q. Were you present at the office of Mr. Shearman, in the Erie Railway building, on the evening of August 6th, 1869, with other Directors of the road, at the time when the papers were prepared for obtaining that Receivership? A. I was present. I do not know whether it was his office, but I presume it was. It was an office in the Grand Opera House.

Q. First look at the signature to the paper now shown you, and which purports to be signed in behalf of the Albany and Susquehanna Railroad Company, by J. R. Herrick, Vice-President. A. (After examining.) They are both mine.

Q. Your own personal signature as Director, and also as— A. Vice-President.

Q. This order recites on the complaint in this action and the affidavits hereto annexed, and with the consent of sundry defendants I do order, &c." Did you make an affidavit? A. My impression is that I did.

Q. At that time? A. At that time.

Q. Besides signing this consent? A. That is now my impression.

Q. Please look at the other signatures to the consent, and say who these gentlemen were, and whether they stood in the relation of Directors to the Company, any of them, and if so, how many? A. All of them were then Directors.

Q. What led to this movement in the Company to change the management? A. It was a lack of confidence in the management on the part of Mr. Ramsey, the President, and also the feeling that he was arbitrary, and not honestly administering its affairs.

Q. Did the movement at all originate with or come originally from anybody outside of the Company? A. My impression is not.

Q. Did it originate with Jay Gould or James Fisk, Jr., or either of them? A. So far as I know, it did not. It originated in the first place among the Directors more than a year previous to the movement we then made.

By Mr. STICKNEY:

Q. Your affidavit, which has been shown you or the copy, mentions an injunction restraining you from acting as a Director of the Company. Do you know by whom that injunction was signed, or by whom it purported to be signed? A. Judge Clute, I understand.

Q. Will you look at the copy of the injunction, shown you in the case of the Albany and Susquehanna Railroad Company against Jacob Learned and others, and state whether that is not a copy of the in-

junction that was served on you? A. I doubt whether it is worth while to look, for I never read the original. I simply handed it to my attorney.

Q. Will you look at it and see, according to your best recollection? A. I understood at the time I was restrained from acting as Vice-President. I was so told by my attorney.

Q. That injunction was served on you before you came to New York, on the night that Mr. Fisk and Mr. Courter were appointed Receivers? A. Before that.

Q. On that night, after you had been served with the injunction, it was that you signed that consent as Vice-President? A. Yes, sir.

Q. Then where did you first go on the night of the 6th of August, when the Receiver was appointed, when you reached New York? A. My impression is that we went to the Erie office.

Q. What conversation had taken place among you in reference to coming to New York? A. Do you mean among our Directors?

Q. Yes, sir. A. The purport of our conversation was that our only relief was then to get an order appointing Receivers.

Q. Was the name of the Receiver mentioned? A. It was not at the time, except Mr. Courter and myself were suggested first.

Q. When was the change from your name to some other name first suggested? A. I declined from the fact that Mr. Courter and myself were relatives, and it would not appear well. After I declined, the name of David Wilbur was suggested, but Mr. Wilbur declined, and it was insisted that Mr. Courter should act alone. Mr. Courter came to me and said he did not have back bone to go through the fight alone, and he wished that I would go with him. I declined again, and that we must select some one else, and the name of Mr. Fisk was suggested. I do not recollect by whom.

Q. Where was his name first suggested? A. In this office at the Erie building.

Q. Can you remember whether Mr. Shearman suggested it? A. I cannot remember. My impression is not, but I am not positive about it. My own idea is that some one of our Directors suggested it, and, as near as I now recollect, I think Colonel North; I am not positive.

Q. He was afterwards elected— A. He was then a Director.

Q. And was, at the election on the 7th of September, on the same ticket with Mr. Fisk and Mr. Gould? A. Yes, sir.

Q. What time did you reach the Opera House or the Erie building? A. It is now impossible to say. My impression is seven o'clock or thereabouts; I am not really positive.

Q. You left again for Albany when? A. We left between eleven and twelve o'clock or thereabouts; I am not positive as to that.

Q. The eleven o'clock train? A. I think it was the eleven o'clock train, if they had a train at that hour. It was about that time.

Q. Were you there in the office all the time? A. No, sir.

Q. How much of the time? A. We were there a larger portion of the time. My impression now is, that after the papers were made out and signed, we came to the Hoffman House and took supper.

Q. With whom? A. Our Directors only.

Q. No one else? A. I do not now recollect, but I think no one else, if I remember right.

Q. Who were present there in the Erie building, in the room where the papers were prepared during the evening? A. All of our Directors were present.

Q. Who else? A. Mr. Shearman, Mr. Ensign, Mr. Sibley, and, my impression is, one or two others, whose names I do not now recollect.

Q. Can you give no other names? A. Mr. Gould came in while we were there, also.

Q. Any one else? A. I do not know whether Mr. Fisk came in before the papers were signed or after. My impression now is, that the papers were completed and signed.

Q. He may have come in before? A. He may have. I simply recollect we had been there some time before Mr. Fisk came in. My impression is, that it was after that he came.

Q. Who was mentioned as the Judge from whom the order was to be obtained? A. That I do not recollect now. I do not know as he was named at all. I simply remember this: that after going to the Hoffman House, some one remarked that they had gone to see Judge Barnard, as near as I can recollect.

Q. What time did you go to the Hoffman House; and did you say that you to dined or took supper? A. I suppose it would be called supper.

Q. What time was that? A. I should think half-past nine, possibly ten.

Q. That is your best recollection? A. Yes, sir.

Q. Judge Barnard was mentioned, then, at the Hoffman House? A. Yes, sir; it was remarked that they would have to see some Judge, and in the mean time, as we had not had supper, we had better go for supper. While we were at supper, it was understood that Judge Barnard was seen and the order obtained.

Q. And this was about half-past nine o'clock? A. As near as I can recollect; possibly as late as ten.

Q. You went back to the Erie office before you went to the railway station? A. We went that way, but I think very few got out of our carriages. I think we went around that way to the depot.

Q. You have mentioned some men who were present at the election who were on the Fisk side, and whom you did not know, but who appeared to be laboring men, and also men of respectable appearance on the Fisk side? A. No, sir.

Q. Some laboring men on the Fisk side? A. Some laboring men.

Q. Do you know where they came from? A. I do not, of my own knowledge.

Q. Had you heard it mentioned? A. I had.

Q. Where did you hear it mentioned they came from? A. From New York.

Q. Who did you hear mention them? A. I am really unable to say at this time.

Q. See if you can remember. A. That is the best I can now recollect. My impression is, I heard it mentioned before by the Ramsey and the anti-Ramsey men, that they were from New York.

Q. When is the first time you heard anything said on that? A. On the morning of the election.

Q. Are you sure you did not hear it on the evening before? A. I am quite positive I did not, but I am not exactly positive.

Q. Were you at the Delavan House in company with Mr. Field and Mr. Fisk, or either of them, on the evening before the election? A. I was there with Mr. Field, but whether Mr. Fisk was present I am now unable to say.

Q. Did you, at the Delavan House, hear anything said about men coming from New York? A. Not that I recollect of, yet I may have. I think I heard nothing of it until the next morning, from some parties. My impression is both, that these were men from New York.

Q. Do you remember how many Directors there were in the Albany and Susquehanna Railroad Company on the 6th of August? A. Yes, sir.

Q. How many? A. Fourteen.

Q. How many of the Board of Directors were in the anti-Ramsey party? A. Eight.

Q. Name them, if you please? A. I think I can name them all: Mr. Samuel North, Alonzo Everts, David Wilbur, Azro Chase, Jacob Learned—can I see this paper in which you have the names?

Q. Yes. Which paper do you mean? A. The one containing the consent. (Takes the paper.) Another one is Jeremiah Austin.

Q. Does his name appear? A. His name does not appear here (the consent) Charles Courter, and myself.

Q. Are you sure about Mr. Austin? A. I am.

Q. Do you know which way he voted on the 7th of September election? A. I cannot at this time state, but I feel I know he voted against the Ramsey ticket.

Q. Did you see him vote? A. I do not recollect now that I did.

Q. Can you be certain? A. I cannot recall.

Q. You cannot be certain as to Mr. Austin, whether he voted against the Ramsay ticket? A. I recollect that Mr. Austin gave his proxy to Mr. Leonard, and Mr. Leonard voted it.

Q. Are you sure? A. I am in no other way. I know Mr. Austin was one of the most active and violent of the anti-Ramsey Directors.

Q. You do not know which way he voted? A. No, sir.

Q. He did not come down from Albany with you on that evening? A. He did not.

ARTHUR JHONES, a witness, being duly sworn, testifies:

By MR. STICKNEY:

Q. What is your occupation? A. I was admitted to the Bar in

1857, but since 1864 I have not practiced, but have been a law reporter, connected with the New York News Association which serves various papers with law news. I have also done some outside reporting.

Q. Have you been in the habit of attending the Courts? A. For the last five or six years my duty has been to attend the State Courts daily, except Sundays.

Q. Will you state whether you have frequently been in Court when Judge Barnard has been holding Court? A. Quite frequently. I have, nece sarily. It is my duty to be there a good deal.

Q. State whether you remember any remarks made by Judge Barnard, while he was sitting on the Bench, in relation to Mr. Justice Clerke, formerly of the Supreme Court? A. I remember one occasion in which Mr. Justice Clerke's name was handed to him by counsel as Referee.

Q. By consent, was that? A. I am not sure that it was by consent, but it was handed to him by some person for Referee, and Judge Barnard said that no man need ever offer that man's name, and he said that that man had lied about him, and had been his enemy. I desire to say I am not sure about the exact words, but I give the substance; and he said that he had made his success in life by favoring his friends and not his enemies.

Q. Who did? A. Judge Barnard.

Q. In how loud a tone was that said? A. In a tone to be heard in the whole room.

Q. Do you remember at what time this was said? A. I cannot fix the time definitely, but it was during the hour before 12 o'clock. The day I can't remember. I have only the thing before my mind, not the time at all.

Q. Was it since Mr. Justice Clerke's term expired? A. Since Justice Clerke left the Bench.

Q. That was on the 1st of January, 1870? A. Judge Brady was elected in his place. It was 1870.

Q. Do you remember the time when Dorman B. Eaton was assaulted in the streets of New York? A. I do.

Q. Was that a matter which excited considerable public attention? A. It was.

Q. Had you heard it spoken of among lawyers and among other persons? A. It was talked of a great deal.

Q. Will you state whether you heard any remarks of Judge Barnard on the Bench in relation to that matter? A. I must again say that I give the substance as I understood the words, and as I am sure they were.

Q. How soon after? A. It was very soon after; while it was still doubtful whether he would recover or not.

Q. State what Judge Barnard said? A. Mr. Justice Barnard said that his enemies were very unfortunate.

Q. Give his language in the first person, as nearly as you can? A. "My enemies are very unfortunate. One of them went home from

"his woman, and fell down dead in his house; and another tried to make a little capital by getting himself knocked in the head; but he got knocked too hard."

Q. Who was the first person he referred to?

Mr. CURTIS:

Do you want the witness to give his inference?

Judge BARNARD:

Let him go on? A. I understood him to refer to Henry J. Raymond, who shortly before died very unexpectedly.

Q. It was generally known, and a matter of some notoriety, that he did die suddenly? A. It was generally known about his sudden and peculiar death.

Q. Do you know whether Mr. Eaton had been active in litigation against Fisk and Gould? A. Mr. Eaton was. I believe he was counsel in the suit of Ramsey against Erie. I believe he was counsel in that, or if not, he was connected with it, and he was a defendant in the suit of the Erie Railway Company against Ramsey and others.

Q. In what kind of a tone were these remarks you have last mentioned? A. Somewhat excited, and loud enough to be heard all over the room.

Q. How many persons were there in attendance in the Court-room at that time? A. The room was tolerably full at that time, as it usually is. It was the Chambers of the Supreme Court, and very much larger than these rooms. The room, I suppose, was half full outside of the Bar.

By Mr. ANDREWS:

Which Chambers? A. The Chambers in the new Court-house.

By Mr. STICKNEY:

Q. This was about what time, as near as you can remember? A. I can only fix the time by other facts which happened. It was shortly after that attempt was made to kill Mr. Eaton.

Q. Was it during the activity of the Albany & Susquehanna litigation? A. It was just after the suit of Ramsey against Jay Gould and others, I think that is the title of the suit.

Q. That was in what year? A. I am not sure; I have so many suits to recall.

Q. 1869? A. It must have been 1869 or 1870.

Q. Were you present in Court before Judge Barnard when Mr. Thomas C. Fielda was bailed, or admitted to bail, after the indictment had been found against him? A. I succeeded in getting into the Court-room that day before he was actually bailed.

Q. About how long ago was that? Q. Five or six weeks, I think.

Q. Justice Barnard that day was holding Chambers. State what took place? A. He left the room for the purpose of going in the Oyer and Terminer room. I knew that there was a probability, or

heard there was a probability, that Mr. Genet was to be bailed, and I followed in order to get into the Oyer and Terminer room.

Q. Was Judge Barnard holding the Oyer and Terminer at that time? A. That I do not know.

Q. He was sitting in Chambers? A. He was sitting in Chambers before he went in there for the purpose, I believe. I believe he announced that from the Bench about bailing somebody. I went to the ordinary public door. There was an officer standing at that door, who was opposing anybody going in. I spoke to him, knowing that he knew I was a reporter, and he said that he could not let me in; that he was under orders not to admit anybody.

By Mr. ANDREWS:

Q. Who was the officer? A. It is the one we have been in the habit of calling the infant; he is a great big fellow.

Q. Have you seen him here lately? A. No, sir. He is a great big fellow, who used to stand at the Chambers door. I tried to get through the little room door in which the assistant clerk of the Chambers has his desk, but that was shut. I then, with two other reporters, went around through the Special Term—the old Special Term room, and entered through that door, and I found one reporter there already.

By Mr. STICKNEY:

Q. How did you find the door through which you entered? A. The door was open.

Q. The one you have just named? A. That door went from the old Special Term room. We went in there, and found Mr. Genet was getting bailed, and we took a number of notes of that.

By Mr. ANDREWS:

Q. Who was sitting on the Bench then? A. Judge Barnard was on the Bench in the Oyer and Terminer room. Later in the day I saw Mr. Justice Barnard leave the Bench again, and I went at once into the Oyer and Terminer room, which was then open, and Justice Barnard not appearing, I hurried through the other room to what is known as the Supreme Circuit, Part 2. I pushed at the door, and there was something against it, but it yielded, and I found a chair put under the knob of the door. I removed the chair and went in there. Justice Barnard was not in, but in a minute or two he came in. I found the matter was Mr. Fields' bail. While that was going on—and that is what you want me to state, what happened there—some other men continued to crowd in. The officer had gone to that door. Justice Barnard said, "What are they trying to do; are they trying to creep in there?—Shut the door."

Q. Did you hear any other thing said by Judge Barnard on that morning in relation to these matters? A. Not that I remember.

Q. Was Mr. Fields admitted to bail? A. The case was removed to the Oyer and Terminer, and then he was admitted to bail.

Q. How many people got in there? A. I suppose ten or a dozen

besides those who were in there already—besides Mr. Fields' counsel, and I am sure somebody from the District Attorney's office.

Q. Do you remember anything that took place on one occasion on a motion or an application for a Receiver on a judgment debtor's property? A. That was one Saturday.

Q. When was that? A. I should say last Fall. A gentleman applied for a Receiver on ordinary supplementary proceedings.

By Mr. ANDREWS:

Q. Give us the case. A. I cannot give you the case nor the counsel, and the statement must go for what it is worth.

By Judge BARNARD:

Q. Give the day of the month or week. A. It was Saturday; I cannot tell further than that; the application was made for a Receiver to Mr. Justice Barnard.

By Mr. STICKNEY:

Q. For what? A. For a Receiver on supplemental proceedings. The counsel was a young man, and represented that there was property discovered. Mr. Justice Barnard said, when the other gentleman commenced to oppose—the other counsel—"In such matters, of course, we always grant a Receiver; you are gone, counsellor." I think those were his words. There was a gentleman sitting close to me, and Judge Barnard looked over to him and said, "There is a friend of mine, and a very honest man, I know, and I think I will appoint him Receiver." This gentleman got up and said that unfortunately he happened to be the defendant in that case.

Q. The judgment debtor in the case? A. No, sir; I think he said defendant. Judge Barnard asked him how he happened to get into the scrape. The gentleman explained that he had paid all that was fairly due on the debt. I have got a vague impression that it was some bill for champagne. Judge Barnard, after the gentleman had made this explanation, turned round to the plaintiff's counsel and said:

"Counsellor"—

Q. Who had applied for the Receiver? A. Who had applied for the Receiver. "Counsellor, you will have to tell your client that Judge Barnard is such a bad man and such a rascal, that he will not grant this order."

Q. Did he say anything about putting it on his shoulder, or any such expression? A. It was something like that. I think I have got it as near as I can tell.

Q. Did he grant the order? A. That I cannot vouch for.

Q. Did you see any papers handed up to him after that? A. I did not. I will not vouch that he did not subsequently grant the order.

Q. So far as you know, did he at that time? A. So far as I know, he did not, of course.

Q. In what kind of tone were these remarks made? A. In a conversational tone. There were only four or five persons in the room.

Q. So that any one could hear easily? A. All that were in there could hear easily.

Q. Will you state any remarks that you have heard Judge Barnard make on the Bench, about articles of impeachment. A. There were a dozen times in the course of a week or ten days.

Mr. ANDREWS (to the witness):

When you were taking notes?

Mr. STICKNEY:

He was not taking notes.

Mr. ANDREWS:

Yes, I saw him every day.

Q. How many times did you hear him refer to that? A. I suppose a dozen times. He would say, "I suppose this will be some other article of impeachment."

Q. State any particular occasion, if you remember, when he made use of any expression of that kind? A. That was on the 22d of February; he got up and scratched himself and said: "I suppose they will put that in. I am going to scratch, and I suppose that will make the hundred and first, or thousand and first article of impeachment; I have forgotten which it was. I think that must have been on the 22d.

Q. Of February last? A. In the morning. I do not know whether you wish anything that did not occur on the Bench. When he came on the Bench he spoke something else, which, perhaps, I ought not to speak of. It was rather conversational than otherwise.

Q. You may give that.

By Mr. PRINCE:

Q. That was not on the Bench, as I understand you? A. As he was going on the Bench.

By Judge BARNARD:

Q. Had the Court opened? A. I do not think myself it is quite proper.

Mr. PRINCE:

We will not go into that.

Mr. STICKNEY:

We do not press it.

Q. You are not certain whether it was on the 22d of February? A. I am not quite certain, but I think it was from a great many circumstances.

Q. Was it Washington's birthday? A. Washington's birthday; that is what I think, from a great many circumstances which connect my mind with it.

Q. This time you have mentioned when Judge Barnard was on the

Bench, and referred to certain matters as proper to go into the articles of impeachment, or something to that effect? Within what period of time have these occurrences taken place? A. I should think within ten days before the 22d, and possibly one or two days after the 22d of February.

Q. 1872? A. Yes, sir; the present year.

Q. State whether you were present in Court when the Union Pacific litigation was before Judge Barnard? A. I was necessarily there; it was my duty to be there.

Q. State what remark you heard Judge Barnard make in the course of this litigation on the Bench, if you remember any? A. I suppose what you want to get at is, what is stated in the *Tribune* this morning. Judge Barnard certainly made a remark of this nature on the Bench, that he had driven out one set of scoundrels, and that he thought he would another.

Q. While he was sitting on the Bench? A. Yes, sir.

Q. Did he put in any other word than scoundrel? A. Not that I know of; not that I remember.

Q. What is your best recollection? A. My best recollection is, that he did not.

Q. Any epithet? A. My best recollection is that he did not. I remember a remark of that kind.

By Mr. ANDREWS :

Q. Have you been employed by anybody, and if so, by whom, to stay in the Court or Chambers and take down the remarks made by Judge Barnard while holding Chambers? A. No, sir; except so far as my employment as a newspaper reporter required me to do it. If you desire me to make it more careful and full, I will.

Q. To whom did you communicate these remarks which you have stated Judge Barnard made? A. I told them to Mr. Stickney this morning. I wish to be thoroughly frank in this matter. Some time ago Mr. Stickney asked me to recall them, and I handed a written memorandum of these remarks to hand to Mr. Stickney, which Mr. Stickney states he never received.

Q. Did you report any of these things for the papers at the time you were reporting? A. Some of them, I think I did.

Q. Can you name any one that you reported to the papers? A. I think I reported that speech about his driving one set of scoundrels out of the State.

Q. For what paper? A. I reported it, not directly to the paper, but to the New York News Association, which at that time furnished the *Commercial*, the *Post*, the *Journal of Commerce*, and, I think, the *Mail*, and, I think, the *Telegram*, at that time.

Q. Can you give the date when that remark was made, or have you no means of refreshing your recollection? A. I have not.

Q. Have you any means of refreshing your recollection of the precise words used by Judge Barnard at that time? A. Not as to the precise words. My own memory and the general purport of that remark is clear, but not the precise words.

Q. Are you quite certain that that remark was not made by a witness, Mr. Thomas C. Durant, of Judge Barnard? A. Quite certain.

Q. Are you quite certain that no such remark was made by Mr. Thomas C. Durant, on the stand, referring to Judge Barnard? A. That I am not certain of.

Q. Do you remember or not whether Mr. Thomas C. Durant, at that time on the stand, said that General Frank P. Blair had told him that Judge Barnard had made such a remark? A. That I do not recollect.

Q. Your recollection, you say, is that Judge Barnard made that remark? A. Judge Barnard made it casually in Chambers or in Court.

Q. Was it in Chambers; and if so, what place, what room? A. The present Chambers.

Q. Are you as certain about what you stated in reference to his having made that remark as you are in regard to any other remark that you have testified to here? A. I am.

Q. It was in the present Chambers? A. Yes, sir.

Q. You are just as certain of one as the other? A. Yes, sir.

By Mr. ANDREWS:

Q. I want to know whether you are certain that Judge Barnard made that remark? A. If you put in the words "in substance," I will say certainly. I do not testify to the actual words.

Q. This was some years ago? A. I guess it was nearly two years.

Q. Have you any memorandum whatever, by which you have refreshed your recollection upon this point? A. None, whatever.

Q. You state from memory, dating back two years? A. If I had any memorandum, I should probably be able to give the dates, but I have not.

Q. You have testified about the bailing of Mr. Genet and Mr. Fields; did you see me there that day? A. Yes, sir; and I spoke to you.

Q. Don't you know that in the room when Henry C. Genet was bailed— A. I am speaking of when Mr. Fields was bailed, and I think you were there when Mr. Genet was bailed.

Q. I was there on both occasions. A. I think you were there.

Q. Don't you remember that in the room when Mr. Genet was bailed, there were from fifty to a hundred people? A. I should not think so many as fifty; I should say twenty-five or thirty.

Q. You say the door was closed, so that people could not get in? A. The iron door, as it was then—the half flat was turned back; I understood that the inner door could not be closed.

Q. You do not know that? A. No, sir.

Q. Don't you know that the door was kept in that way, that one portion of it was kept shut and the other left open? A. Yes, sir.

Q. To keep men from coming in during the Stokes case? A. I know that.

Q. There was no difficulty there in getting into that room, when Mr. Genet was bailed? A. I have stated that an officer stopped everybody from going in.

Q. What officer? A. I have already stated the man called the infant, a very large, tall man, a good-natured fellow.

Q. Was there not a great crowd of people outside? A. Yes, sir; quite a number.

Q. Don't you know that it is customary, where there is such a crowd, to keep them out? A. Yes, sir; but I have understood that reporters were exceptions.

Q. Don't you know that there were a great many reporters there? A. When I got in, there was but one reporter present.

Q. Who was he? A. Mr. Falke, of the *News*.

Q. Don't you know that a great many people came in afterwards; I believe you were in before the Court was opened? A. No; a little while after the Court was opened.

Q. How long did the whole proceeding last? A. Ten or fifteen minutes—a very short time.

Q. Was Judge Garvin present? A. He was present.

Q. Was anything said except what was said by Judge Garvin and Judge Barnard, about fixing the bail? A. I think not; I remember reporting pretty much all that was said, and I think I got some friend to help me with his stenographic notes; there was very little said.

Q. Did it occupy more than three or four minutes? A. I think more than that; but probably not more than ten minutes.

Q. In reference to the bailing of Mr. Thomas C. Fields; did you not see Mr. Fields in the Chambers with his counsel before the Chambers were adjourned on that day? A. Yes, sir; I saw Mr. Thomas C. Fields there.

Q. With his counsel, Mr. Beach? A. I do not remember.

Q. Did not Judge Barnard announce in Chambers, before he went to the Supreme Court Circuit, Part 2, that he was going to receive Mr. Fields' bail? A. I think not; I think he announced that he would be away for some little time.

Q. Don't you know that he didn't hold Chambers again that day? A. I do not know; I think he announced that he would be away for some time.

Q. Did you go into the Supreme Court, Part 2, through the ordinary public door, and the door was open? A. The door was open when I entered it, but there was a chair jammed under the knob of the door.

Q. That was before the Judge came in? A. Before the Judge came in.

Q. Before anybody came? A. Mr. Fields was in there, and somebody from the District Attorney's office, and I think the bondsmen were there when I got in.

Q. Don't you know that the door was kept open from the time after you went in there, and before the Judge came in? A. After I got in, I was very busy reporting; I do not think that anybody got in after that order Judge Barnard gave to the door-keeper.

Q. There were quite a number of people in at the time? A. Probably a dozen, or twenty.

Q. Was the District Attorney there? A. Somebody from the District Attorney's office. I do not think it was Judge Garvin.

Q. There was this same crowd outside in the hall at this time, this rabble, hanging around? A. Not a large crowd, but some twenty or thirty people hanging about there.

Q. Was not this all on the same day? A. The same day, but an hour or two after—full an hour later, I think.

Q. What day of the week was this? A. I do not think it was Saturday, but what day it was I cannot fix.

Q. Did you ever take a manuscript from Judge Barnard's desk, and take it over to the New York *Times* for a publication? A. No, sir. If that is to be gone into, I propose to state all about it.

Mr. PRINCE :

What is the object of this?

Mr. ANDREWS :

This witness has been hostile to Judge Barnard, and I desire to prove the fact.

The WITNESS :

I am perfectly willing to go into it.

Judge BARNARD.

I am perfectly willing. He stole the manuscript.

Mr. STICKNEY :

If all the parties are perfectly willing, perhaps he may as well state.

Mr. PRINCE :

It is only encumbering the records.

Judge BARNARD :

I want to know the fact, whether he took it.

The WITNESS :

I will state what there is about it. Judge Barnard made a charge to the Grand Jury, and I, not being a stenographer, was afraid to publish a report without its being verified. I went to the stenographer of the Court, and asked him to make me a copy from the minutes of the Court, and I made a bargain with the other reporters to share with me the expense of making that copy. I went back into the Oyer and Terminer room, and found that this gentleman had handed up the copy which he was to make for me to Judge Barnard, and as I came in Judge Barnard handed it down from his desk. I took it to the stenographer, showed it to him, and asked if that was my copy, and he said yes. I took it away, and copied it for my papers. The stenographer charged me \$5 for it; he subsequently refused to take the \$5. If that is stealing, I do not know.

Q. Did you ever bring it back to Judge Barnard when requested?
 A. Mr. Justice Barnard sent over—three officers came after it, one after another, and threatened me about it. When I found there was so much trouble, I made up my mind that I could not afford to part with it; then I handed it to another party.

By Mr. STICKNEY:

Q. Did Judge Barnard ever make a remark to you from the Bench in regard to it? A. Yes, sir; a day or two after that he told me to bring back that paper I had stolen.

Q. Did he at any other time allude to it from the Bench? A. I do not know whether he did or not. He has made some remarks about stealing papers in my presence.

Mr. ANDREWS puts in evidence a list of references granted by Judge Barnard since 1867, and which is marked Charge 6, A. Also a list of references granted by Judge Barrett during the month of January, 1872, which is marked Charge 6, B.

ADRIAN HERZOG, a witness, being duly sworn, testifies:

Q. State what your business is? A. My business is furniture.

Q. What is the name of your firm? A. L. Marcotte & Co.

Q. Where is their place of business? A. 29 East Seventeenth street.

Q. And has been for how long a time? A. Four years.

Q. How long previously in New York? A. Twenty years.

Q. Did your establishment supply furniture for the Erie Railway Company at the Opera House, in Twenty-third street. A. Yes, sir.

Q. When was that? A. I think that was in 1868, 1869, or 1870.

Q. What officer or officers of that Company gave directions and orders for the furniture? A. Most all of them.

Q. Mr. Fisk? A. Mr. Fisk principally.

Q. Mr. Fisk principally, and others occasionally? A. Mr. Hall, the purchasing agent, and most of the heads of departments. I don't remember their names now.

Q. What device or mark was put upon the furniture supplied to the Erie Railway Company? A. The monogram E. R.

Q. Did you supply, under those orders, any furniture with any other monograms? A. Yes, sir.

Q. What was the other monogram? A. I don't remember.

Q. Have you produced the monograms? A. I produced one E. R.; the other is uncertain; I cannot tell which is which. I cannot remember the letters that were on that furniture, but I know they were not the same.

Q. Then you were ordered to mark that furniture with two different monograms? A. Yes, sir.

Q. Was the most of it marked E. R., or with the other monogram?
 A. Most of it is marked E. R.

Q. How much was marked with the other monogram? A. Ten or twelve chairs.

Q. What kind of chairs, dining-room or library? A. To the best of my recollection, they were round arm chairs, the same that were put in the offices of the Erie Railway Company.

Q. Please produce the dies that you have? A. There is the E. R. die. (Producing a die.)

Q. That is the die? A. With which most of that furniture is marked.

Q. Produce the other die that you have with you? A. Here it is. (Producing a second die.)

Q. What are the letters of the second die you produce? A. G. G. B.

Q. Were the ten chairs you marked by the direction of the officers of the Erie Railway Company marked with this second die? A. I cannot say. They were marked with some letters, but what letters I do not know.

Q. What is your best recollection as to the use of this die, G. G. B.? A. I cannot remember enough to say.

Q. Have you any customer, the initial letters of whose name are G. G. B.? A. No, sir.

Q. Does the name of E. R. appear on your books? A. No, sir; it only says, "with monogram."

Q. But it does not indicate the monogram? A. No, sir.

Q. Neither of the monograms? A. No, sir.

Q. The name of the Erie Railway Company appears upon your books? A. As a debtor.

Q. In connection with the delivery of this furniture? A. Yes, sir.

Q. And that included the ten chairs? A. Ten or twelve.

Q. What is your best recollection and belief as to the chairs on which you used this die, G. G. B.? A. I don't understand you.

Q. What is your best recollection as to the furniture on which you used the die monogram G. G. B.? A. I really could not say. I cannot say that I remember that those letters were on the chairs.

Q. What is your best belief about it? A. My belief is that this was on it.

Q. G. G. B.? A. G. G. B.

Q. Can you say who were the makers of these dies? A. Yes, sir.

Q. Have you the bill? A. Yes, sir. (Producing the bill.)

Q. Was the name of the maker G. H. Kundahl? A. Yes, sir.

Q. This bill bears date December 13th, 1869, and reads, "Messrs. L. Marcotte & Co., bought of G. H. Kundahl," and is for one die? A. Yes, sir; a part of that bill is for one die.

Q. It includes one die? A. Yes, sir.

Q. This other bill that you produce is dated July 21st, 1869—L. Marcotte & Co., to G. H. Kundahl. Does that include the other die? A. Yes, sir.

Q. Have you any trace in your books, or bills, by which it will appear that these two bills embrace any other dies than the two dies

marked E. R. and G. G. B.? A. That is too long a sentence for me to answer.

Q. Have you in your books any entry by which you can trace these particular dies, E. R. and G. G. B., to any other bills than these two bills? A. No, sir.

Q. If you saw these chairs you would be able to identify them as of your make, would you not? A. Yes, sir.

Q. And you would be able to identify the monogram upon them in connection with these dies, if you saw them? A. Yes, sir.

Q. To whom was the furniture so ordered by the Erie Railway Company delivered? A. It was delivered at the offices of the Erie Railway Company.

Q. Did you send your drays to the Company with the whole of the furniture? A. Not the whole. Sometimes they would send their own trucks, and at other times we would send our own.

Q. What you sent you delivered at the Erie Railway Company? A. Yes, sir.

Q. And what they sent for, you delivered at your warehouse? A. Yes, sir.

Q. Do you know of any person in the city whose name corresponds with the initials G. G. B.? A. We have a great many G. B.'s, but not two letters G.

Q. You have no other G. G. B. among all of your dies? A. No, sir.

Q. Have you any other letter G. G. B., or have you any G. G. B. on your books except for the ten or twelve chairs? A. We have no G. G. B. at all.

Q. On your books? A. No, sir.

Q. If the chairs, marked with this die and this monogram, had been ordered by the customer to whom you delivered them, and who paid for them, would not the name appear on your books, according to the ordinary course of your business? A. Yes, sir.

Q. You can account for their not being on your books, only by the circumstance that they must have been paid for by some one else? A. Yes, sir.

Q. You can't connect them with any other party, unless it is the Erie Railway Company, under this order? A. No, sir.

Q. You could identify the furniture if you were permitted to see it? A. Perfectly.

Q. If you were permitted to look at the furniture in the house of Mr. George G. Barnard, for the purpose of ascertaining whether this die were used on that furniture—this die G. G. B.—will you at once make the examination and report the result to the Committee? A. Yes, sir.

Q. Has Judge Barnard ever bought any goods at your warehouse, or paid any bill for anything there? A. No.

Mr. TILDEN:

Does it appear who paid for these chairs?

Mr. VAN COTT:

The Erie Railway Company paid for the ten or twelve chairs that were ordered in addition.

Mr. CURTIS:

The witness does not fix on this monogram at all. I want to ask the witness some questions about that. I ain not going to have an inquisition on Judge Barnard's house if they do not trace.

Mr. TILDEN:

That is why I asked.

By Mr. VAN COTT:

Q I will ask another question. After the furniture had been taken by the Erie Railway Company, was any of it without mark returned to you to be marked? A. Yes, sir.

Q. These chairs that you have spoken of? A. That I cannot tell—some chairs.

Q. Will you state whether the time when these chairs were returned to be marked corresponds with the time that appears in the bill as the date when the die was purchased? A. I cannot tell the date without looking at the books.

Q. You can state, generally, whether it was near that time. A. It was before the delivery.

Q. What is the date? A. The last die is dated December 13th, 1869.

Q. That is the date of the bill of it? A. Yes, sir.

By Mr. CURTIS:

Q. You are a partner in the house of Marcotte & Co.? A. Yes, sir.

Q. I don't understand you to testify as matter of recollection, or from your books, or otherwise, that you know that your house put this monogram G. G. B. on any chairs that you delivered to the Erie Railway Company? A. No, sir.

Q. You don't know that? A. No, sir.

Q. You don't mean to be understood as testifying that this monogram was put on any chairs manufactured by your house for the Erie Railway Company? A. No, sir.

By Mr. VAN COTT:

Q. I ask whether you have any other die in your establishment which, with reference to your books, or any recollection whatever as to the times of its use, could have been put on those chairs that were sent back by the Erie Railway Company to be marked with a different die from the monogram E. R.? A. We have a great many dies, and I cannot remember which is which, which has been put on which chairs.

Q. (The same repeated.) A. I cannot remember.

Q. You say you could identify the furniture if you saw it? A. Yes, sir.

Q. Without any difficulty? A. Without any trouble.

By Mr. PRINCE:

Q. Is there any one in your establishment who would be likely to recollect how these chairs were marked? A. No, sir.

By Mr. TILDEN:

Q. Did you ever make any furniture for Judge Barnard? A. We never did.

Q. Of no kind? A. No kind.

Mr. VAN COTT:

Will the Committee ask Mr. Curtis to permit their own messenger to accompany the witness to Judge Barnard's house to make this inspection of the chairs, to ascertain if there is any chairs with such a monogram in his house.

Mr. PRINCE:

We have no right, I imagine, to go into any one's house.

Mr. ANDREWS:

What is the object of asking Mr. Curtis?

Mr. PRINCE:

It strikes me that you have made the offer virtually by the statement of the witness that he is willing to go and examine, and that the other side decline to accept.

Mr. VAN COTT:

The Committee is to inquire after facts here.

Mr. PRINCE:

We have a right to send after persons and papers.

Mr. VAN COTT:

You may not be able, under your authority, to send for chairs. But I suppose it is competent for the Committee to inquire of the party most interested to have the facts cleared up, whether he will consent to the witness under examination going to his house to make the examination and his report thereon to this Committee.

Mr. CURTIS:

When there is anything addressed to me of a specific character, I will answer. I don't feel that there is now.

Mr. VAN COTT:

We ask Mr. Curtis whether he will consent, on behalf of his client,

to allow his messenger to accompany the witness to Judge Barnard's house to look at the chairs.

Mr. CURTIS :

The evidence that has been taken, not having in any manner connected the monogram G. G. B. with any furniture delivered to the Erie Railway Company by these parties, I refuse my consent on my own responsibility, without having ascertained any fact in relation to it. When you look at it as a matter of law—

Mr. VAN COTT :

I hope we will not have an argument. Consent is refused, and we shall argue about it very differently.

Mr. CURTIS :

You may argue it when and where you please. If the gentleman could succeed in tracing that monogram into the possession of the Erie Railway Company, then they would have a plausible pretext for asking that Judge Barnard's house should be searched for the monogram.

Mr. VAN COTT :

We should have a free consent, under circumstances, very easy to be imagined.

GEORGE W. CASS, a witness, being duly sworn, testifies :

By Mr. VAN COTT :

Q. What was your connection with the Pittsburgh, Fort Wayne and Chicago Railroad Company, on the 7th of June, 1869? A. I was a member of the Board of Directors, and President of the Company.

Q. Did that Company, through you as its President, on the 7th of June, 1869, execute a lease of certain railway property to the Pennsylvania Central Railroad Company? A. I executed, on behalf of that Company, a lease of the railroad property of the Pittsburgh and Fort Wayne to the Pennsylvania Railroad Company.

Q. What was the amount of the annual rent, and payments of interest on account of the sinking fund, reserved by that lease from the Pennsylvania Railroad Company, to your Company? A. The amount of rental that was to come to the stockholders was \$1,380,000, annually, payable in equal monthly instalments; the amount of the interest and sinking fund I cannot tell you precisely, but it was about \$1,080,000.

Q. I call your attention to this provision in the lease relative to the payment of the annual rent: "The said several instalments shall be paid at the office or agency, for the time being, of the party of the first part, in the city of New York, except in any case in which the party of the first part shall have designated any other and different place within either of the States, in which some part of the said railway is situate, for the payment of any instalment, in which case

"payment of said instalment shall be made at the place so designated." I also call your attention to the clause in the lease in relation to the payments of annual interest and on account of the sinking fund, in these words:—"Provided, however, and it is hereby agreed in respect to the several instalments of interest and sinking fund by this article made payable at the office or agency of the party of the first part, in the city of New York, that if the party of the first part shall give to the party of the second part, reasonable notice in writing of the payment of any such instalment at a place within either of the States within which the said Pittsburg, Fort Wayne and Chicago Railroad, or any other part thereof, is situate, such instalments shall be paid at this place." Were these provisions in relation to the payment of the annual rent and the payment of the interest, and to the sinking fund, the subject of careful consideration and discussion before the lease was executed? A. They were before the Committee that had the matter in charge that prepared this lease.

Q. What were the reasons that prevailed for inserting these provisions in the lease, authorizing, at the option of your Company, the receipt of money elsewhere than in the city of New York? A. The purpose was to protect the Company against unjust and vexatious suits, against injunctions and restraining orders, to prevent the Company from paying money to the stockholders and creditors to whom it was properly due.

Q. Injunctions and restraining orders made where? A. Made here, of course.

Q. In the city of New York? A. Yes, sir; where the money might be deposited.

Q. Do you know whether there was any general understanding and feeling that large financial corporations and other corporations were insecure in the city of New York, in respect to the manner in which justice was administered here? A. It was that view of the case which induced the Committee to make that provision in the lease. The course of proceedings in the Courts here at that time admonished the Company that it might be necessary to protect themselves against that kind of orders then being granted in this city against large corporations.

Q. Do you know whether that feeling was quite prevalent in commercial and financial circles? A. Well, it was quite prevalent, so far as my information extended; whether it was sufficiently wide to call it general, I don't know.

Q. The lease was for the term of 999 years? A. Yes, sir.

By Mr. TILDEN:

Q. Have you a letter which you addressed to me the other day? A. I have a copy of it.

Q. Will you be good enough to produce it? A. This I believe to be a correct copy of the letter which I addressed to you on the 18th of March, (producing the paper).

Q. Are the statements contained in that letter true? A. I believe them to be true.

Mr. TILDEN :

I state to the Chairman, as there has been some statement in regard to me personally, that I desire that letter to be entered on the records.

Mr. CURTIS :

What is it ?

Mr. PARSONS :

I suppose it has reference to Mr. Gould's statement, that Mr. Tilden had received a fee of \$10,000. The letter is in the words following :

NEW YORK, March 18, 1872.

MY DEAR SIR: I have this morning received your letter of Saturday, and hasten to answer it, as I am to leave this city for Pittsburg, this afternoon.

Your statement of the facts connected with the arrangement to pay you a counsel fee of \$10,000 by the Erie Railway Company, for services in the Cleveland and Pittsburg Railroad, is strictly correct, all of which came within my personal knowledge.

At the time since, and now, I held and hold the position of President of the Pittsburg, Fort Wayne and Chicago Railway Company, which Company then held, and still holds, a very important contract relation with the Cleveland and Pittsburg Railroad Company. It was this fact that caused me to take an interest in the complication in which the Cleveland and Pittsburg Company was involved in 1869, and which had been brought about through the action of a Director of the Erie Company, that Company at the time (as was believed) holding a majority of the stock of the Cleveland and Pittsburg Railroad Company.

To free the latter Company from the litigation in which it was involved, I came to this city, and had an interview with the then President of the Erie Railway Company, who condemned the whole proceedings of what was called the "Erie Board," at Cleveland. He agreed that a portion of the members should resign, and that you and myself should come into the direction and the Executive Committee. I returned home, and, after a conference with I. N. McCullough, Esq., then and now President of the C. & P. R. R. Co., a plan of re-organization was agreed upon, as set forth in your letter. To this date nothing had been said to you on the subject. On coming to this city and developing the plan to you, you declined to go into the Board, or have anything to do with the business, for the reasons stated in your letter. I said to Mr. Gould and Mr. McCullough—the latter more than once—not to urge the question on you any further, as you might take such a decided stand that we would not be able to overcome your objections ; but that the plan should be proceeded with, and we should elect you into the Board, and take the chances of getting you to serve. This was done, and you were elected without consulting you further, or obtaining your consent. After the re-organization of the Board, the arrangement that you should be the umpire in the Executive Committee, and have charge of all legal proceedings, and be general counsel to

the Committee and Board, was arranged as you state, and without first consulting you. I took it upon myself to make such arrangements as would bring harmony into the Board, believing you would acquiesce in such arrangement as I might make. Before you came into the Cleveland and Pittsburg Board, a resolution was placed on the minutes electing you the general counsel, and fixing the compensation. It was also proposed, that owing to the interest which the Erie Railway Company had (controlling a majority of the stock), and the interest which the Pittsburg, Fort Wayne and Chicago Railway Company had by its contract with the Cleveland and Pittsburg Railroad Company, that each of those Companies should retain you in their respective behalfs, touching those interests. All this was done without any indication from you as to what you would do.

I afterwards learned from you that the Erie Railway Company had paid you the ten thousand dollars, as agreed, without waiting for you to render a bill. The five thousand dollars agreed to be paid by the Pittsburg, Fort Wayne and Chicago Railway Company has never been paid, or even spoken of since.

The compensation above referred to was for those specific services, and for no other, so far as I ever heard or believe. Those services continued to the close of the year, when you retired from the Board. I remained in the Board during that year, and ever since.

I will add that the arrangement made in 1869 was of large pecuniary benefit to the stockholders, and gave to the affairs, as well as the stock of the Company, a stability they never before had.

I believe what I have written covers the whole case—at least I have so intended; and if, after I return from Pittsburg, it shall be found that any facts have been omitted, I shall be glad to supply the deficiency.

Truly yours,

G. W. CASS.

HON. S. J. TILDEN.

*In the matter of the charges preferred against Hon. G. G. Barnard,
Justice of the Supreme Court. Before the Committee of As-
sembly.*

NEW YORK, March 27th, 1872.

WILLIAM C. BARRETT, sworn, testifies as follows :

MR. PRINCE :

I suppose you will have to conduct your own examination.

WITNESS :

At the request of Judge Sutherland, who called at my house on Sunday last, I voluntarily appear here to correct what I believe to be an erroneous report of the testimony of Mr. Strahan. Every conversation had with Judge Sutherland prior to the first of September, and prior to the granting of the Foley injunction, took place, I believe, in my presence and hearing. On Wednesday prior to the granting of the injunction, I called on Judge Sutherland at his house in the evening, and had a long personal interview with him. I then personally was anxious that Judge Sutherland should be re-nominated for the Supreme Court, for I believed him to be a pure, high-toned man. I then told him about this intended application before him, and I stated that I called upon him to see if it would be any way injurious to his future prospects as a candidate for the Supreme Court. We talked over the subject in a friendly spirit, and I came to the conclusion that the application might tend to his injury in obtaining a re-nomination from Tammany Hall. He thanked me for my expression of opinion, and for my desire not to place him in a position that might tend to his injury for a re-nomination, and I left him entertaining the opinion that an application be made to some other Judge, in which Judge Sutherland then acquiesced. I need not give the whole of the conversation with Judge Sutherland, because we were very friendly. I then called and saw my associates, Mr. Strahan and his partner; I presume, Mr. Robert Strahan, Mr. Foley and my nephew, Judge Barrett, who were my associates.

MR. STRAHAN :

I beg your pardon, Judge Barrett was not there. A. No, he was not present. I subsequently talked with him; I told them, I think, everything that took place between myself and Judge Sutherland, and told them that I thought it would be more agreeable to Judge Sutherland that the application should not be made to him. My nephew then partly, I think, insisted that the application should be made to Judge Sutherland, and we made an agreement and called an Judge Sutherland at Judge Sutherland's house, on Friday night following, Mr. Foley, Mr. Strahan, Judge Barrett and myself. Mrs. Sutherland told us that the Judge was sick in bed with fever; we retired, and then

Mr. Foley, Mr. Strahan and myself started for Harlem, for Judge Ingraham's house, to find him. When we got there the servant man told us that Judge Ingraham was not in the city, and would not be home that night. The next morning, Saturday—that was Thursday night we called at Judge Ingraham's, I think, on Saturday morning next we called at Judge Sutherland's house and found that he had gone to Hudson. I think we then started in quest of Judge Barnard, and could not find him. Monday came, and the meeting, I think, was held that night, on the 4th of September. On Tuesday we called upon Judge Sutherland again—Mr. Strahan, Judge Barrett, Mr. Foley and myself, and had a long interview with Judge Sutherland, and no reference was then made to the interview between Judge Sutherland and myself on the previous Wednesday. The subject was then opened to Judge Sutherland—no papers produced to him. I stated the facts of the case, and told him I thought it was a case where an injunction could not be refused by any Judge. I referred to decisions of his own, and I referred to the statute of 1847. He said that he would not grant the injunction out of Court, that it was too important a matter, and I replied that I didn't mean to apply for it out of Court. He said he was not holding Chambers, and that there was a rule, or some agreement between the Judges, that no Judge except the Judge in Chambers should act in these *ex parte* injunctions. My nephew got somewhat warm, and used these words, I think: "Sir, is it possible that we cannot find a Judge in the city of New York to discharge his duty?" I think those were his words. Judge Sutherland replied, and said: "I never shirk my duty, but I will not look at the papers out of Court. I will not grant them in Court without a written or verbal direction or request of Judge Barnard's, and if you will get that for me, I will be in Court to-morrow morning at 10 o'clock, take my seat in Chambers, and hear your application." We then again started for Judge Barnard's house, and saw his servant girl. His servant girl said that he was out fishing, and that he might not be home to dinner. We went away, and the next morning the injunction was granted, the 7th of September, when, I think, I don't know, but I believe that Judge Sutherland was then in Court, prepared to carry out the arrangement of the previous night, in case Judge Barnard did not attend, that he would go into Chambers and grant the injunction, if it were proper.

By Mr. STRAHAN:

Q. I recognize this whole matter relating to Judge Sutherland as rather collateral to the main issue here, but since the testimony of a friend of mine has been attempted to be contradicted, I deem it proper that I should ask a few questions. Will you permit me? A. Certainly, sir, with pleasure.

Q. Do you know how many times in all, you applied to Judge Sutherland, or went to see him upon the subject of granting this injunction? A. I went once on Wednesday night, the four of us went on Thursday night, two of us went on Saturday morning, four of us went on Tuesday evening following.

Q. That is four different times? A. Yes, sir; that is four different times.

Q. Do you know how many times Mr. Foley went to see him when you were not present? A. I have no personal knowledge.

Q. You spoke of one occasion when you went to Judge Sutherland's house on a morning, and found that he had gone to Hudson? A. Yes, sir.

Q. Was told that he had gone to Hudson? A. Yes, sir.

Q. Didn't Judge Sutherland, the evening before, make an appointment with you gentlemen to meet him at his house that morning at that hour? A. I think he did, sir—not the evening before, for he was sick.

Q. Well, the day before? A. Thursday before.

Q. On the occasion that you mentioned when you returned and stated to your associates the conversation that you had with Judge Sutherland, did you not distinctly state that Judge Sutherland stated to you that he had been promised the re-nomination by Tammany Hall; that he did not wish to grant this injunction, or do any act that would interfere with his getting re-nominated. Did you not also state that he said to you that after he should be re-elected, if he should be re-elected, he would devote the balance of his term to breaking down the corruption of this Tammany Ring. Did you not state also, that Judge Sutherland gave as a further reason why he did not wish to grant this injunction, that he was a poor man, and had no money beyond his salary, and had not saved a cent of it; that if he should be defeated in his re-nomination or re-election, that he would be obliged to move out of his house, and reduce his style of living. And did you not, upon all these reasons being given to you by Judge Sutherland, submit to your associates whether or not, in view of all those facts, it would not be better to apply to some other Judge and relieve the old gentleman? A. I don't think ever I used those words, and I don't think Judge Sutherland ever used those words to me. I intimated in the strongest language, that Judge Sutherland left the impression upon my mind that he would not like to have that application made to him.

Q. One moment further, if you please. Did you not say to us at that time, that Judge Sutherland said to you further, that he had spoken to Judge Ingraham, that Judge Ingraham had—I forget now, how many years to serve; that Judge Ingraham told him that he proposed to devote the balance of his official term to breaking down the Tammany Ring, and that we should apply to him, and that he would grant the injunction? A. That Judge Ingraham would. Yes, sir.

Q. Didn't you state this to us at that time? A. I don't recollect anything of the kind; I don't recollect that Judge Ingraham's name was mentioned; I cannot give you the exact words that passed between Judge Sutherland and myself, but I will give you the purport of it: That he was extremely unwilling to have that application made to him; that was a private interview, which I should not perhaps have mentioned to my associates at all, but not one word of that subject

was ever mentioned in the presence of John Foley, Mr. Strahan, my nephew, or myself; it was a private conversation, which I incautiously mentioned to my associates subsequently, and the whole thing was drawn out of Judge Sutherland by my desire to have his re-nomination not injured by doing anything publicly, which would defeat him at Tammany Hall.

Q. He was not re-nominated? A. He was not, sir; my nephew was, and was elected; I would say further, if you will allow me, in the report of Mr. Strahan's testimony, these words were used, as well as I recollect.

By Mr. CURTIS :

Q. What report do you allude to? A. In the *Herald*.

By Mr. STRAHAN :

Q. Have you heard his testimony read? A. No, sir, I have not.

By Mr. PRINCE :

Q. Do you want to refer to it? A. I should like to refer to it, because I know nothing personally about it, except what I hear from my nephew, and he says Mr. Strahan emphatically denies that he ever gave any such testimony.

Mr. PRINCE :

The reports that you read in the newspapers are, you know, no reports that go from this place. The reports from the newspapers are picked up in the lobbies of this hotel here.

The WITNESS :

Judge Sutherland told me that he heard the testimony read here, and that it is exactly as it appeared in the *Herald* of Sunday last; that Judge Barrett said that Mr. Barnard was a bold, brave man, and that if he, Judge Barrett, were on the Bench, he would not have dared to grant the order.

Mr. STRAHAN :

There is an addition to that—"without taking the papers." That has been added to it by Mr. Strahan.

The WITNESS :

I believe Judge Barrett was at least three-quarters of an hour presenting that to Judge Barnard.

By Mr. CURTIS :

Q. Mr. Barrett, will you allow me to suggest that if you suppose there is anything in the testimony of Mr. Strahan that you wish either to contradict or explain, that you have it read from the minutes? A. I should like, if the Committee will allow me, to have them read the testimony with reference to Judge Barrett.

The stenographer read the following passage: "When we went up

that morning, and got the injunction, Judge Barrett came out of the Court and made this remark, 'That is a bold and brave act; if I was Judge, I would not have had the courage to do it,' and then was added, 'without taking the papers.'"

I have no personal knowledge on the subject, except what I have learned from Judge Barrett; he told me that he wrote to Mr. Strahan, asking if the reports were true; that Mr. Strahan called upon him in Court; that he took him, upon the Bench, and that Mr. Strahan unequivocally denied that he ever gave such testimony of any kind or character; I suppose Judge Barrett will claim the right to come himself and see whether it is true or not; from my knowledge of the man, I think he is the last man on earth to make that statement.

By Mr. STRAHAN:

Q. Who, Judge Barrett? A. Yes, sir.

By Mr. CURTIS:

Q. Since you are here, I would like to ask you a question or two. Were you counsel in any of the Albany and Susquehanna litigations? A. I was, sir. I was counsel in the trial of the cause in Rochester during the whole of its progress.

Q. And had you any connection with any of the previous cases, any of the previous suits, in reference to that matter? A. I don't think I had, sir. I never prepared a paper, and indeed never read a paper, connected with the Susquehanna Railroad until I was retained as counsel for the road by the Board of Direction. My partner or Mr. Redfield may have prepared the papers, but I never saw them, and never was consulted. Subsequently, of course, I read the papers in the various suits, so as to enable me to try the cause with Mr. Field, who was my associate in the case.

Q. Had you not some connection, as counsel, with the suit which was instituted in the name of the Company against Ramsey *et al.*, in which an order of arrest was granted by Judge Barnard? A. No, sir; none whatever. I knew nothing about the application until after the order was granted, long after.

Q. Did it become your duty, in the trial of the case of the People against the Albany and Susquehanna Railroad Company, to examine the papers on which that order of arrest was granted, and to make yourself familiar with the circumstances under which it was granted? A. It did, sir. I read them carefully; knew all about it, on perusal of the paper.

Q. Now, I wish to know whether, in your opinion, the order of arrest issued in this case was or was not a proper order to be made? A. I certainly think it was, and if I were a Judge I would have granted it myself.

Q. Have you practised much before Judge Barnard? A. Considerably, sir: argued a good many causes before him at General and Special Term.

Q. And appeared before him at Chambers? A. Yes, sir.

Q. Have you ever known any judicial act to be done by him in which, to your knowledge, there occurred any fact or circumstance indicating that he acted in his judicial capacity either from any corrupt motive or from any undue favoritism towards either of the parties litigant? A. I have no personal knowledge on the subject. I can only state, that whenever I tried a cause before Judge Barnard, or made an application before him for an order, I believed the application was right and proper. Judge Barnard generally took my statement of facts from my papers, presuming, I believed, that he had confidence I would not deceive him; and, personally, I have no knowledge of any judicial wrong by Mr. Barnard.

Cross-examination by Mr. PARSONS:

Q. When the Foley injunction was granted, were you not aware of the rule of the Judges of the Supreme Court in this District, requiring such application to be made to the Judge regularly assigned to hold Chambers? A. I was, sir.

Q. Was not Judge Barnard the Judge regularly assigned to hold September Chambers Term? A. He was; I think he was on the Bench that month.

Q. Did you not coincide in the opinion which Judge Sutherland expressed of the impropriety of his interfering, after Judge Barnard took his seat, unless on the request or by the direction of Judge Barnard? A. I did, sir; and so stated.

By Mr. STRAHAN:

Q. Who held the August Term? A. Judge Sutherland.

Q. How many applications or interviews were held with Judge Sutherland during that term on the subject of that injunction? A. I had the first interview on Wednesday night.

Q. That is, during his term? A. I am not certain about that. It may be that his term expired the previous Saturday. It was Wednesday night before the injunction. The injunction was granted the 7th of September. Monday was the 4th, Saturday the 2d. Yes, the previous Wednesday was my first interview with Judge Sutherland. I don't think he was holding; I think his term had expired. I know it was distinctly stated by me then and there, that I would not apply for the injunction outside of Chambers.

DAVID DUDLEY FIELD, a witness, called on behalf of the defense, sworn. Examined by Mr. CURTIS:

Q. You have been summoned by us with the request to produce certain papers that have not been put into the case in reference to the Susquehanna railroad litigation. Have you those papers? A. Yes, sir.

Q. Will you produce them, and state their relevancy to the subject matter of that litigation? A. I will. First is the affidavit annexed to the Chase complaint, upon which the Receivership was granted.

Mr. STICKNEY :

The original of that affidavit is in evidence.

Q. Was this affidavit embraced in the printed case? A. No.

Mr. STICKNEY :

The original was put in from the County Clerk's office by us; the original affidavit which was submitted with the complaint at the time of the granting of the Receivership in the Chase suit.

WITNESS :

I have now in my possession the original affidavit of David Wilbour, Jacob Leonard, Samuel North, Alonzo Everts, Azro Chase, Charles Courter, and Jonathan B. Herrick, sworn on the 6th of August, 1869; and its relevancy is easily understood when the action of Judge Barnard upon that complaint and affidavit is contrasted with the action of Judge Sutherland upon the complaint of Van Valkenburgh, with the common verification and without a plaintiff's name in the complaint itself. The next paper or next papers are a series of orders in that case, continuing the injunction and receivership from time to time, one of which I will read, dated the 24th of August, 1869: "The motion to continue the appointment of Receivers, heretofore made in this action, coming on this day for argument, and the parties on both sides appearing by counsel, it is ordered that the said motion stand over until the 15th day of September next, at 11 A.M., and in the mean time, and until the hearing and decision of the said motion, the appointment of the Receivers heretofore made is confirmed and continued, and the injunction issued herein is continued and confirmed." An order made at Special Term.—The next is a series of orders, continuing the injunction and Receivership in the Bush case, what is called the Fuller Receivership. One of the orders I will read; it is dated August 24th, 1868, and is as follows: "In the case of Joseph Bush against the Albany and Susquehanna Railroad Company, and others. The motion to continue the appointment of Receivers heretofore made in this action coming on this day for argument, and the parties on both sides appearing by counsel, it is ordered that the said motion stand over until the 15th day of September, at 11 o'clock A.M. And in the mean time, and until the hearing and decision of the said motion, the appointment of the Receiver heretofore made is confirmed and continued, and the injunction issued herein are continued and confirmed."

Q. Does that Receivership still continue? A. No—well, as to whether the Receivership is continued depends perhaps upon another circumstance. These orders were continued down continually, from time to time, till I think the 1st of May last, and perhaps later, I am not sure.

Q. Both parties appearing? A. I have read that order. Then, in the course of last Summer or Autumn, this suit was settled, and an order has been entered, I think, discontinuing it, but of course I would refer you to the order itself for specific information. Until that was done,

I believe those orders were kept alive. The next paper that I read is an order granted by Judge Peckham, on the 7th of August, in this suit.

Q. Which suit? A. The Chase suit. You should remember that the Chase suit was commenced in New York, the place of trial being New York. On the 7th of August is this order granted by Judge Peckham: "At a Special Term of the Supreme Court, held for the State of New York, at Chambers, by Justice Peckham, on the 7th day of August, 1869, at the city of Albany. Present, Mr. Justice Peckham. Azro Chase against the Albany and Susquehanna Railroad Company and others. Upon the foregoing affidavit of J. H. Ramsey, an order made at Special Term of this Court, in a case in which John W. Van Valkenburgh is plaintiff and above company defendant, appointing Robert H. Pruyn Receiver, which order is now on file in the County Clerk's office of Albany county, let all proceedings be staid upon the order purporting to have been granted in this action on the 7th of August, at the City Hall, New York, by Mr. Justice Barnard, for thirty days, and let the plaintiff show cause upon the above papers at Special Term, to be held at the City Hall, in the city of New York, on the 1st Monday of September, 1869, at 11 o'clock A.M. of that day, why plaintiff should not further be perpetually enjoined from proceeding, and why all proceedings under said order should not be wholly and forever stayed."

The next is an order granted by Judge Peckham, on the 9th of August, in the same case: "At the Special Term of the Supreme Court, held for the city of New York, at Chambers, by Mr. Justice Peckham, in the city of Albany, on the 9th day of August, 1869. Present, Mr. Justice Peckham. Azro Chase against the Albany and Susquehanna Railroad Company and others. Upon the foregoing affidavit of Mr. Smith, and upon the amended summons and amended complaint in this action, and on motion of S. Hand, counsel for some of the defendants, let the plaintiff show cause at Special Term of this Court, to be held at the City Hall, in the city of New York, on the first Monday in September, 1869, at 10 o'clock, A.M. on that day, why the writ of assistance granted in this action should not be set aside, and the order denied on the ground that the same was issued, and the said order granted *ex parte* before any judgment had been entered or granted in the action, and that it was illegally obtained, and is void; and in the meantime, and until the hearing and decision of the above, all proceedings on the part of the Sheriff of the county of Albany and the defendant Post towards executing or attempting to execute the writ of assistance issued in this action, original or copy, sealed or unsealed, be and they hereby are strictly and wholly enjoined and stayed."

The next is the order of Mr. Justice Peckham, made on the 13th of August, 1869, in the case of the Albany and Susquehanna Railroad Co., and William A. Rice against Joseph H. Ramsey *et al.*: "An order having been issued by Justice Peckham on the 7th of August, 1869, in this action, upon the verified complaint herein, enjoining and

"restraining the defendants as therein stated, and ordering that they show cause, on this day and at this Term of the Court, why the said injunction order should not be continued, it appearing that some of the defendants have been served and some of them have not yet been served with the summons, complaint and injunction order; now, on motion of John K. Porter, Wm. F. Allen and S. Hand, of counsel for the plaintiff, and Messrs. A. J. Parker and D. D. Field, of counsel for some of the defendants, being now present, and objecting that there is no Court now in session, and that the Justice present has no jurisdiction to make any order, and protesting against any order being now made, ordered, that the said order to show cause on this day, and the hearing thereof, be and hereby is postponed to the Special Term of this Court to be held on the 30th of August instant, in the City Hall, in the city of Albany, and in the meantime, and until the hearing and decision of the said matter, it is further ordered that the said injunction continue in force against all the defendants, and that the defendants not yet served show cause why they should not be restrained and enjoined as stated in said order, a copy of which is to be served here-with at least four days before said Term."

That is the case in which there was issued that comprehensive injunction restraining the defendants and all other persons which I have referred to in my former testimony, and under which the counsel supposed it would not be possible or proper to make any movement toward getting the books until the injunction was dissolved or modified. Next I have a paper, being a statement made by John W. Van Valkenburgh, the plaintiff, on whose application the Receivership of Mr. Pruyn was granted by Judge Peckham. On the 15th of December, 1870, Mr. Van Valkenburgh came with another person to my office, and there made a statement, in presence of myself and one of my clerks, and we took down the statement immediately after he left, as follows: This is my memorandum. "December 15th, 1870, Van Valkenburgh came to me, and stated that the books of the Albany and Susquehanna Railroad Co. were concealed in a tomb of the Albany Cemetery, on the hill, and that from 50 to 75 men from the Company's shops were brought into the building at the election, many of whom were in the Directors' room at the time of the meeting and voted 'no;' among them was Corey, master of one of the shops, Van Schaick, do., Naville, also Blackall, do." Cornwall was with Van Valkenburgh at the conversation. And this is Mr. Ensign's memorandum: "December 15th, 1870, Van Valkenburgh says the books were taken from the Albany and Susquehanna R. R. office to Smith's office, and from that to Smith's house, and thence Mr. McNamara took them to the old cemetery and put them in a vault; they were carried between here and Smith's by night, and finally taken to Troy, and brought back by Wilbour Ramsey; they never were in Pittsfield. There were from 50 to 75 men from the shops at the election under his lead; among them were Blackall, master mechanic; Corey, head of shops; Van Schaick, car builder; Naville, bridge builder. They were ready for a fight, but not armed. Hopey had a pistol. There was

"another party in reserve outside." (Q. In the yard?) That is a remark made it appears by Mr. Ensign. "He was in a room at the election with Hendrick, Westhover and Hardie, near the door; they all voted 'no,' he thinks a majority voted 'no;'" many of his men voted who were not stockholders; about 50 of them were in the room, many more of his men in hall with stockholders, and town Committeees from line of road. Blackall and Cornwall supported—I think he knows something about the decision at Rochester; Cornwall was present."

Q. Let me ask you here, did Van Valkenburg, when he came to you and made these statements, assign any reason for his coming and giving you this information? A. I am not able to say whether he did; I tell you what I have heard, however, if you will have that, sir; but when he came to me I don't think he told me; I have no recollection that he told me.

Q. From what source had you heard anything on the subject? A. I had heard from my clients, Mr. Fisk and Mr. Gould, or one of them, I don't know which.

Q. Van Valkenburg himself didn't assign to you any reason for coming to you and giving you this information? A. I think not; at least, I don't remember it.

Q. Have you given the date? A. Yes, sir; December 15, 1870. I can tell you, of course, what I understand to be the motive, but then, that, I suppose, I got from my clients.

Q. What did your clients say on the subject? A. Is it proper for me to say that?

Q. Well, if you have any objection to saying it, I won't ask it. A. I have refused heretofore to say what my clients have told me, and I think it is proper that I should. It is easy enough to ask Mr. Van Valkenburg what was his motive in his coming to me. I have taken a memorandum of the various orders granted against the Church party in that litigation, as they appear upon the printed case, and as I know it will facilitate the gentlemen of the Committee in getting at it, I will read it here. The injunction in the case of the Albany and Susquehanna R. R. Co. against Keys and Wilbour will be found at pages 87 and 95 of the Ramsey Exhibits, in the second volume. This injunction was granted by J. H. Clute, Albany County Judge, September 6th, 1869. Then on page 103 of the same volume, Ramsey Exhibits, is the injunction in the case of the Albany and Susquehanna R. R. Co. and John W. Van Valkenburg against Chase, Brown and others. That injunction was granted on the same 6th of September by S. W. Rosendale, Recorder of the city of Albany. On page 136 of the same volume is the injunction granted in the case of David Groesbeck and others against J. Gould and others; signed J. H. Clute, Albany County Judge, dated the same 6th of September, 1869—the day before the election, you remember. Then the injunction in the case of Van Valkenburg against the Company is on page 175 of the same volume or series; rather the order appointing a Receiver in the Van Valkenburg case, on page 175, the order having been made by Mr. Justice

Peckham. The order itself does not appear to be finished. The summons and complaints and affidavits are printed, and it is worthy of notice that this complaint has the ordinary verification by Van Valkenburg, August 6th, and that the service annexed to it is a consent or an admission of service upon Mr. Rice, the Director of the company, on the 6th of August. "I, Wm. A. Rice, Director of the Albany and Susquehanna R. R. Co., the above-named defendant, admit due and personal service of the foregoing summons and complaint upon me, this 6th day of August, 1869, by delivering a copy thereof to, and leaving the same with me, at the city of Albany, New York. Wm. A. Rice, Director; witness, H. C. Moak." At page 144 of the same volume, but Church's Exhibits, is the injunction in the case of John Eddy against J. Gould, dated the same 6th of September, 1869. Signed J. H. Clute, Albany County Judge. On page 152 of the same series is the injunction in the case of Minard Hardie against the Albany and Susquehanna R. R. Co., dated September 7th, 1869 Signed, J. H. Clute, Albany County Judge.

On page 107 of the same series is the complaint and injunction in the case of the Albany and Susquehanna Railroad Company and Wm. A. Rice against Ramsey and others; injunction dated August 7th, 1869; signed R. W. Peckham.

On pages 101 to 106 are the complaint and injunction in the case of the Albany and Susquehanna Railroad Company against Jacob Leonard, dated August 5th, 1869; signed J. H. Clute, Albany County Judge.

On page 124 is the injunction in the case of Pruyn against Parr and others, dated August 9th, 1869; signed S. W. Rosendale, Recorder of the City of Albany; and then the injunction in the case of the Albany and Susquehanna Railroad Company against Wilbur, Chauncey and others, on page 95 of the Ramsey Exhibits, dated September 6th, 1869; J. H. Clute, Albany County Judge.

Then there are some papers in the Oneonta case, Church Exhibits, pages 3 to 7, but there is a memorandum saying that no summons, complaint or injunction were ever served upon the defendant Wilbur, and there appears this order: "The injunction granted by me heretofore in this case appearing to me to have been improvidently granted upon a mistake of fact; now, therefore, upon reading the affidavit of David Wilbour, J. H. Keyes, and Samuel H. Case, it is ordered that the said injunction be and is hereby vacated. W. Parker, Justice of the Supreme Court." Dated Owego, August 5th, 1869.

Q. Have you now enumerated and referred to all the orders and their accompanying papers granted by any of the Judges on the Ramsey side? A. It was my intention to do so, and I believe I have so far as they appear in this case.

Q. Did you argue the appeal, before the General Term, from Judge Darwin Smith's decision in the case of the People *vs.* The Albany and Susquehanna Railroad Company? A. I did with Mr. Lapham Mr. Lapham and myself argued it.

Q. Is there a copy of the decision of the General Term embraced

in this printed case—the case on appeal which is now before you? A. Yes, sir.

Q. Will you please refer to that? A. The decision—whether it is called a judgment or order is a matter of dispute, as you know—is on page 187 of the 2d volume.

Q. Is that the opinion of the Court? A. No; the order itself, judgment or order. Next follows the notice of appeal to the Court of Appeals, and next, on page 191, is the opinion of the General Term.

Q. Delivered by whom? A. Mullen, presiding Judge; and then there follow the two opinions upon the motion to set aside the judgment, one delivered at Special Term by Judge Johnson, and one at General Term by Judge Talcott.

Q. Does the order of General Term disposing of that appeal follow the opinion which was delivered, or filed by Judge Mullen. A. I prefer that you should judge of that by looking at the order itself; here is the order, and here is the opinion.

Q. You do not know of any discrepancy, do you? A. I would rather say nothing about that; we appeared before him to settle the form of the order, and I thought it should be settled different from what it is, but he took the form of the order as proposed, I believe, in the main, by the other side. I should prefer to express no opinion about that because the paper is here.

Q. Was there a proceeding in that case before it left the Special Term to settle an allowance to the counsel? A. I can tell you by referring to the papers themselves. The original order, or judgment, which ever it may be called, contains this provision, which is on page 53, with a star, 1st volume of the case. It is ordered and adjudged that it be referred to Samuel L. Selden, at Rochester, to pass upon the accounts of the Receiver, and upon hearing the parties at Albany to ascertain and report to the Court what would be a proper extra allowance in the action, and to which of the defendants it should be paid, and to settle the other matters of detail as may be necessary to carry this judgment into effect. A reference was had under that to Judge Selden, and the report made, of which I have not a copy here, but, according to my best recollection, it reports \$92,000 as the extra allowance. A motion was made to confirm that report before Judge Smith at Rochester, and argued by counsel, myself on one side, and Judge Porter, I think, and Mr. Danforth, I think, on the other.

By Mr. TUDEN :

Q. Ninety-two thousand dollars, for what purpose? A. Extra allowances.

Q. Counsel fees? A. Certainly; \$92,000 was reported by Judge Samuel L. Selden as extra allowances in the case—to the counsel in the case.

By Mr. CURTIS :

Q. What counsel? I do not mean by name, but counsel representing what parties? A. Well, they were the counsel that requires this

explanation ; I am sorry I have not the report here, but my recollection of it is that it reported that sum to be paid to the Albany and Susquehanna Railroad Co. upon the theory that that Company had assumed to pay the counsel fees of the defendants who were engaged in opposing us in the litigation ; that is to say, of the counsel who argued for the validity of the election of the Ramsey Board. I remember to have thought that Judge Selden had included in that amount fees that were earned, or were due to the counsel for Groesbeck, and the other defendants. Whether that was conceded or not I cannot now say, but \$92,000 and odd were allowed to the counsel in that case on the report.

Q. Was that order making that allowance confirmed? A. Never.

Q. Was an order entered making that allowance? A. Oh, the report was made by Judge Selden

Q. Was the report confirmed? A. No, never. I would give you the particulars as I remember them. The motion to confirm was noticed before Judge Smith at Rochester, in the Summer of 1870, when I was in California, and notwithstanding the strenuous remonstrances of my associate to get it off until I could get back, it was resisted, but finally it was postponed to a time when I could return. When I did return I went to Rochester and argued it, and I think I argued it in September. From that day to this it has never been decided, so far as I know. Of course, it would not be decided after General Term had pronounced a decision setting aside the order in that respect, which decision was made, as appears by the date of the order, in May, 1871 ; but that was argued, to the best of my recollection, in September, 1870, and if anybody ever heard anything from it from Judge Darwin Smith about it, he is more fortunate than I.

Cross-examination by Mr. STICKNEY :

Q. Do you know of your own knowledge that the plaintiff's name did not appear in the original complaint in the Van Valkenberg suit? A. I think I do ; I remember looking at it, and I think I saw that it was not there.

Q. Do you remember where you saw it? A. I think at Albany.

Q. In the Clerk's office? A. That I cannot say, whether in the Clerk's office or before the Referee.

Q. Do you remember whether this paper which you held when you were testifying, is an exact copy of this memorandum made at the time? A. I compared it myself.

Q. I mean the paper from which you testified as to the interview with Mr. Van Valkenberg at your office? A. I compared it myself, and believe it to be an exact copy.

Q. And does this copy of your own memorandum contain all that you remember as to that interview? A. It contains all that I thought material to write down, making the memorandum immediately after Van Valkenberg left. More may have been said ; all that I mean to say about it is that immediately upon Van Valkenberg's leaving I requested Mr. Ensign to make a memorandum himself of the conver-

sation, or of the statement, and I made one myself, and these are the two that were made, and I believe them to be accurate.

Q. But so far as your own recollection goes, does your memorandum contain all that you remember? A. Well, I really cannot say whether I can remember anything more that he said or not. I cannot state specifically anything else that he said. I remember that he gave out insinuations that he could tell a great deal more, and that if he had been a witness on the other side, the decision would have been different, or something to that effect, but I will not venture to give the language, and I give only now my impressions, rather indistinct, from this conversation.

Q. What decision do you refer to? A. You must judge of that as well as I.

Q. What decision do you refer to? A. I tell you what he said.

Q. What decision was spoken of between you? A. Nothing more than I have said; if you wish me to guess what decision he referred to, I will do so, but I think that is what he said.

Q. Have you no recollection what decision was mentioned or referred to? A. I do not remember any decision; he was speaking of a decision. We all know perfectly well that the decision in the case was made at Rochester by Judge Darwin Smith, and Van Valkenberg was a witness there. I should guess that he referred to that, but I do not remember that he said anything about it except as I have stated.

Re-direct by Mr. CURTIS:

Q. Will you now give a statement of the history of the litigation of Fisk against The Union Pacific Railroad Company, with a view of describing the character of any orders that were issued in that case by Judge Barnard, and the circumstances under which they were issued, and the necessity, if you regard them as a necessity, for obtaining them? A. I will do so as briefly as I can, giving the history of the litigation, which must, of course, be made up partly from personal knowledge and partly from information in the course of the litigation. With a view to understand the litigation, it will be necessary to know what the claim of the plaintiff was, which was, that he was a stockholder of the Union Pacific Railroad Company, first, as to six shares standing in his name on the books, and next as to twenty thousand shares for which he had subscribed, on the books, and had tendered 55 per cent. in payment, claiming that 55 per cent. was all that he was bound to tender in compliance with the acts of Congress, but which 55 per cent. was refused by the Treasurer, Mr. Cisco, under the advice of counsel, they claiming, the counsel and Mr. Cisco claiming, that the whole stock had been paid in. Now it was supposed that this stock was very valuable; that the Union Pacific Railroad Company had made arrangements with the *Credit Mobilier* of America, by which means stockholders, or some of them, of the Union Pacific Railroad Company could realize immense profits, and I have in my hand a bill filed in Pennsylvania by Henry S. Macomb, one of the defendants in the suit of Fisk, in which he says that "The *Credit Mobilier* of America,

under lawful contracts and arrangements authorized by its Charter, has constructed nearly the whole of the work up to this time done by or for said Railroad Company, and is bound by its agreements to do much more for them of their work, and the said Railroad Company has bound itself to pay to the said *Credit Mobilier* a compensation large enough to make the employment exceedingly profitable. In consequence thereof the said *Credit Mobilier* has been able to divide among its shareholders dividends consisting of the Union Pacific Railroad bonds and Union Pacific Railroad stock and cash, amounting in the aggregate to 752 per cent. on the capital of the said *Credit Mobilier* paid in, or \$752 for each share of \$100. There is still a large surplus undivided already made, as your orator believes, of at least 500 per cent. of the capital, and the said capital itself, or any part thereof, has not been used, or expended, or lost in the business of the Company."

It will thus be seen what the claim was, and what was the amount alleged to be at stake. The suit was commenced on the 3d of July, 1868, in the Supreme Court of this State, the complaint alleging not only the title of the plaintiff, as I have said, but that arrangements had been made between the Union Pacific Railroad Company and the Credit Mobilier of America, and Oakes Ames and Oliver Ames, by virtue of which an immense amount of profit had been derived on the contracts, which ought to belong to the stockholders of the Company. Of course, this is a very imperfect account of the complaint, but I will refer to the complaint itself for more specific information.

Mr. TILDEN :

The complaint is in.

The WITNESS :

The complaint is in. Upon that complaint Mr. Justice Barnard made no other order than one to show cause ; that order was dated the 3d of July, 1868, and required the defendants to show cause, on the 21st of that month, why an injunction should not issue. The summons and complaint appear to have been served on some of the defendants on that day. The order to show cause provided that a motion might be made upon the complaint and affidavit, and such other affidavits as shall be served four days before the motion. The object then of the plaintiff was to obtain information from the defendants and the officers of the Company, with a view to that motion.

By Mr. TILDEN :

Q. With a view to a motion for what ? A. Motion for an injunction ; and he presented to Benjamin F. Ham, an officer of the Company, a request to make an affidavit, and handed him this form of an affidavit: "City and County of New York. Benjamin F. Ham, being duly sworn, says that he resides at ———, and is the Assistant Secretary of the Credit Mobilier of America ; that annexed hereto, and marked A, is a list of the Directors of the said Company ; that annexed hereto, and marked B, is a list of the stockholders thereof,

"with the respective amount of stock held by each ; that annexed hereto and marked C, is a copy of the by-laws of said Company ; that annexed hereto, and marked D, is a copy of all contracts entered into between the Union Pacific Railroad Company, and the Credit Mobilier of America ; that annexed hereto, and marked E, is a copy of all contracts of which deponent has any knowledge between said Credit Mobilier of America and Oliver Ames and Oakes Ames, or either of them ; that the contracts for the construction of the Union Pacific Railroad were made between the Company and ———, and that there are no others, so far as deponent knows ; and that annexed hereto are copies of all such of them as deponent has or can have access to."

You will perceive, therefore—because this is, I think, the key to the whole controversy—that the plaintiffs ask for information as to who were the Directors of the Credit Mobilier, who were the stockholders of that Company, who were the stockholders of the Union Pacific Railroad Company, the contract between the Union Pacific Railroad Company and the Credit Mobilier of America, the contract between the Credit Mobilier and Oliver Ames and Oakes Ames, and any other contracts for the construction of the road. Now, the theory upon which this case has proceeded on the part of the plaintiff, is this, that there was a persistent and defiant refusal on the part of the officers of the Company to give this information, and that for the purpose of concealment, they resisted the Court—the Supreme Court, with all their might, and I think that every order that was passed on the part of the plaintiff, from that day to this, is a necessary consequence of the contumacy of the defendants. That is my view of the litigation, and I think I shall show that by the statements which I make of the facts. Now, Ham was asked to make that affidavit, to give us that information, and here is what Ham did ; this is the affidavit which Ham made. (Witness reads the affidavit, which is marked Charge 9, Q.1).

The affidavit was tendered to Dillon and to Cisco and to Durant. Without going into particulars in my oral statement, I will merely say that in the main they were similar to the affidavits tendered, and sought similar information, and that the affidavits furnished were similar to that of Ham.

By Mr. TILDEN :

Q. Have you got them there? A. I have.

Mr. PARSONS :

The affidavit tendered to Mr. Durant will be found at page 19?

The WITNESS :

Here is the affidavit marked as tendered to the Directors. (Marked, "Charge 9, M1.")

(The witness produced the original affidavits of Sidney Dillon, John

J. Cisco and Thomas C. Durant, and agrees to furnish copies of the same for the use of the Committee.)

(Affidavit of Dillon is marked, "Charge 9, N1." Affidavit of Durant is marked, "Charge 9, O1." Affidavit of Cisco is marked, "Charge 9, P1.")

Q. You may go on with your statement? A. Here is an affidavit of one of our clerks, Mr. William A. Schomp, 9th of July, 1868, and sworn to before W. H. Morgan, Notary Public.

(Found on page 26 of printed case, marked, "Charge 9, R1.")

The next are two orders granted on the 9th of July, 1868, by Judge Sutherland, I believe; they are both alike.

(The Dillon order, found at page 25 of printed case, is marked, "Charge 9, S1," and the Durant order found at page 17, is marked, "Charge 9, T1," and the accompanying affidavit of Bauerdorf, marked, "Charge 9, U1.")

The next is the certificate of Mr Redfield, Referee, dated 10th of July, 1868.

(Marked, "Charge 9, V1.")

Then on the 10th of July, we got these two orders from Judge Cardozo.

(Marked, "Charge 9, W1," and "Charge 9, X1.")

You will bear in mind that the order to show cause, was for the 21st of July, why an injunction should not be granted; on the 18th, we received an order postponing that order to August 4th; on the 17th, an application was made to Judge Cardozo for an injunction against removing those books from the State of New York.

(The order of July 17th is marked, "Charge 9, Y1.")

(The affidavit of Mr. Fisk is marked, "Charge 9, Z1.")

That order to show cause for the 13th, appears to have been adjourned to the 21st, when a motion was made to vacate the order; that was argued and denied, and the persons subpoenaed were ordered to testify on the 21st; that order was made; they were ordered to testify on the next day; on the next day the plaintiff's counsel attended and the witnesses did not attend; then we got an order that they appear the next day or be attached; then on the 23d, attended again, and witness didn't appear; on the 24th, an attachment was issued; I have a copy of the order dated 21st July, 1868, refusing to vacate the order to examine, and directing the parties, Dillon and Ham and Durant, to attend before one of the Judges of the Court on the 22d inst., to be examined.

(Order found on page 35 of printed case, marked, "Charge 9, A2.")

On the 31st of July, we received a copy of the petition of the Union Pacific R. R., Cisco, Macy, Lambart, Dillon and Durant, to remove this cause into the Circuit Court of the United States, founded upon an act of Congress, which was passed on the 27th of July.

(Page 44 of Printed case, marked, "Charge 9, B2.")

That act of Congress is here; I would like you to see it.

On the 31st, we were served with a petition and a copy of an order, and an order to show cause, on the first Monday of August, why said

petition should not then be filed; instead of filing the petition and getting an order to remove, they got this order.

(Page 52 of printed case. Order granted by Judge Cardozo, marked "Charge 9, C2.")

After the granting of that order by which the plaintiff's proceedings were stayed, as you perceive, an application was made to modify it, so as to get an affidavit to answer this petition, and orders were made, and efforts were made, to get testimony, and those efforts were just as successful as the previous one.

By Mr. TILDEN:

Q. To get testimony on this motion? A. Yes, sir; on this petition; this petition was signed, "Cisco, Treasurer of the Union Pacific R. R. Co.," and the question was whether they had been authorized; this was done by Charles A. Lambart and Sidney Dillon and Thomas C. Durant, by Charles Tracy, attorney; that was the point, that it could not be done by the attorney; the purpose was to get affidavits to answer that petition.

Q. I had the impression that the affidavits were in a former motion? A. No, sir; it is enough to say there was various proceedings taken by the plaintiff to obtain evidence in order to meet that, but in the main, they were, as I think, as little successful as the other; on the 30th of July there was an order to take the affidavits of the officers of the company, some of the subordinate officers, to be used on this motion.

(Page 54 of printed case, marked "Charge ", D2.")

By Mr. PARSONS:

Q. Have you the affidavits referred to in that order? A. Yes, sir; they are here (producing them). During the month of July, it will thus be seen that various efforts were made to obtain an affidavit, and that they were unsuccessful, as has been stated.

By Mr. TILDEN:

Q. Where is the order modifying Judge Cardozo's stay? A. I have got it here; you mean to enable us to take affidavits?

Q. Yes, sir. A. I have it here; Judge Cardozo's order, August 4th.

(Page 58 of printed case, which is a part of Exhibit "Charge 9, C2," and the affidavits of Robert E. Deo and Charles F. Bauerdorf, are marked "Charge 9, E2.")

WITNESS:

Unless it is desired, I will not give any more of the orders and affidavits in respect to taking testimony to oppose that application; I will only content myself by saying that the argument of that motion was adjourned from time to time, and was completed on the 17th of December, 1868.

Q. The motion to remove? A. Yes, sir; an order of the 20th of

August, served on us by Mr. Tracy; a motion to discharge an attachment against Charles Tuttle.

(Page 70 printed case, marked "Charge 9 F2.")

On the 17th of December, as I have said, the argument was concluded. That motion was decided early in March, the motion being denied; now I want to get the original papers in that case; I sent to the Clerk's office yesterday, and they said they were all here. (Papers are furnished to the witness.) I have the order. The order denying the motion was made, as I say, early in March, and is entered as on the 10th of March, but filed March 13th.

(Page 78 of printed case, marked "Charge 9, G2.")

I want to call attention to this order. The order is, the main part of it, in the handwriting of a clerk in my office, and the end is in the handwriting of Mr. Shearman. I think that the explanation of it is this, though of that Mr. Shearman can tell better than I, that the order as presented by us, was a simple order denying the motion and vacating the stay; that Mr. Tracy insisted that he should have leave to renew the motion, and that in consequence of that, the concluding part was made. I will read it: "But this order is made without prejudice to a new application for the removal of this action to the Circuit Court of the United States, to be made before the same Justice before whom this motion was made, with such amendments only as may be necessary to remedy the technical defects of the petition on which this motion is made." That is in Mr. Shearman's handwriting, and it must have been introduced on the application of Mr. Tracy, to have leave to renew his motion.

Now, the next proceeding which I will mention here is the injunction against holding the election. (Previously marked "Charge 9, F.") The injunction was granted or was applied for—of course I know nothing of the views of the learned Judge; I am quite sure I didn't get it myself—the injunction was applied for on the strength of these precedents; first the precedent of the previous election of this Company, where there were obtained, as I am told, three injunctions, one obtained by Mr. Dudley Field, from Judge Clerke. This was the application of George Francis Train, plaintiff, dated October 3d, 1867. (Reading the injunction.) That was an injunction on the part of Mr. Justice Clerke.

The next is an injunction granted by Judge McCunn, dated October 1st, 1867, in the name of John M. S. Williams *vs.* the Union Pacific R. R. Co., Thomas C. Durant and others; where there is an injunction against all the defendants, and the stockholders, and the presiding officer of any meeting, that they desist and restrain from all proceedings and actions to prohibit or prevent the plaintiff, or other holders of stock mentioned in schedule C, from voting in person or by proxy, and so on. They are absolutely enjoined from holding and having any election without admitting those votes; but the injunction is here, and I beg you to read it for yourselves. Then I understand there was a third injunction in the name of Charles Gould.

Then next the injunctions in the two contests at elections of the

Pacific Mail Steamship Co., and the Atlantic Mail Steamship Co. With respect to the Pacific Mail Steamship Co., as I understand, there were injunctions on both sides, granted by different Judges, one which is reported in Blatchford's Reports, the injunction being granted by Judge Blatchford. In the Atlantic Mail contest, there was an injunction granted by Judge Brady, which is, I think, *in totidem verbis*, the present injunction, or very nearly so.

(The injunction of Judge McCunn is marked "Charge 9, H2.")

(Injunction of Judge Clerke is marked "Charge 9, I2.")

(The injunction of Judge Brady marked "Charge 9, K2.")

The next are the affidavits showing the contemptuous violation of this injunction.

By Mr. PARSONS :

Q. Which injunction? A. The injunction to restrain the election; the injunction granted by Judge Barnard on the 9th of March, 1869. First the affidavit of Hugh A. Bradley, Deputy Sheriff, dated March 10th, (p.104, printed case, marked "Charge 9, L2.")

Another is the affidavit of William A. Schomp.

(Page 102, printed case, marked "Charge 9, M2.")

Then there is another affidavit of Bradley, dated March 10th.

(Page 107, printed case, marked "Charge 9, N2.")

Then there is an affidavit of Schomp, March 11, before Hayes, Notary Public.

(Page 123, printed case, already marked, "Charge 9, I.")

The next is an order of Judge Barnard, dated the 12th of March, 1869.

(Page 117, printed case, previously marked "Charge 9, G.")

Then there was an order of reference to examine Ham, and Durant, and Dillon.

(Page 125, printed case, marked "Charge 9, O2.")

Then there is a report of the Referee, dated the 16th of March, showing that Mr. Durant declined to be sworn, and the affidavit of Mr. Ensign, sworn the 17th of March, and an order of the 17th, directing an attachment to issue against Durant and Dillon.

(Papers last mentioned are marked "Charge 9, P2.")

The next, on the 18th of March, 1869, is an order to show cause why a Receiver should not be appointed, with a temporary appointment of a Receiver.

(Page 130, printed case, previously marked, "Charge 9, K.")

And the ground upon which that application was made, was that it was necessary in order to maintain the jurisdiction of the Court. On the 20th of March, Durant's examination was taken in Court. On the 20th of March, Mr. Durant was brought into Court to give testimony, and I will read from the stenographer's notes of his examination.

Q. Brought in under arrest? A. I don't say that; I don't know.

By Mr. CURTIS :

Q. Were you present? A. I was present.

Q. I want to ask some questions here to go on the record. Were you present when Mr. Durant was examined before Judge Barnard?

A. I was, and I believe on every occasion.

Q. Do you now hold in your hand the stenographer's minutes of his testimony? A. I do of a portion of it. The report of one day has been mislaid. The 22d I cannot find.

Q. Please read that portion of Mr. Durant's testimony as given in Court, which contains any remark made by him to Judge Barnard personally, or about Judge Barnard personally. A. I have it, sir. It is in the testimony taken on the 29th of March, and here is the question and answer. Perhaps you will allow me to read a little more of this.

Q. I want you to read whatever illustrates that occurrence. A. In connection with the context. The safe had been locked and the combination taken away by Ham, who had gone to New Jersey, and an effort was made to get the combination, so the safe could be unlocked, and here is what Mr. Durant says about it on that day, namely, the 29th of March, 1869:

"Q. Since you were here on Tuesday last, have you made any effort to get these books and papers? A. I sent word to Mr. Ham to come here.

"Q. Where is he? A. In New Jersey, I believe.

"Q. Who did you send for him? A. Some of the young men in the office: I don't know who. I asked him to be sent for. I left instructions for him to be sent for.

"Q. Do you know whether he was sent for? A. I know he was sent for.

"Q. Who sent for him? A. I could not tell the name of the young man in the office.

"Q. What have you done to get him here since last Tuesday? A. I gave instructions to have him sent for.

"Q. When? A. On Friday and Saturday both.

"Q. To whom did you give instructions? A. To Mr. Tuttle and Mr. Crane, to send a messenger.

"Q. Did you ever inquire whether they had sent? A. I did.

"Q. Whom did you inquire of? A. I inquired at the office if any one had been sent for Mr. Ham, and they said yes. I have not been there this morning.

"Q. Did they say what Mr. Ham answered? A. That he expected to be here. That was the last I heard. I presume, if you wish me to state what I suppose to be the case, that some one is advising him not to come.

"Q. Who? A. I don't know; there are some twenty Directors of the company.

"Q. And that some one is a Director of the company? A. I don't know. I know that the majority of the Directors reside out of town, and they are under the impression that this is a black-mail suit, and they have been informed that they would have to come down; that they will be driven out of town, and that Judge Barnard himself has

"said that he has driven out one set of scoundrels, and that he would drive out another." I believe that answers your question.

Q. Is there anything following that? A. Yes, sir.

Q. In relation to that same matter? A. This is what I said:

"Q. You know that was not a proper observation to make? A. No; you asked me why I could not get him here.

"Q. Has he been kept away? A. I don't know; but I presume he has.

"Q. By whom do you presume he has been kept away? A. I don't know. I have no presumption about it. I have not an idea. I know that the President is not here, and a majority of the Directors are in Pennsylvania and elsewhere. I understand that the President was in New Jersey last week.

"Q. Did you ever hear whether he was in communication with Ham? A. No, sir.

"Q. Whereabouts in New Jersey did you understand he was? A. I do not know.

"Q. You didn't understand where, but simply that he was in Jersey. Have you got no idea where he was, from your information? A. No. He has been in Washington.

"Q. But as to his whereabouts in New Jersey? A. Some one told me he was in Jersey City, and I sent word to him, and the next morning there was a telegram from him from Boston, when I came to the office."

Q. When Mr. Durant made the observation on the stand with regard to what Judge Barnard was reported to have said, what reply, if any, or notice of it, did Judge Barnard take. What reply did he make, or what notice of it did he take? A. Well, I am unable to recollect, sir. I don't know; I trust to these notes for my own recollection of the interview generally, and beyond these notes, unless my memory was refreshed in some way, I should not be able to say.

By Mr. TILDEN:

Q. Do you depend entirely upon these notes? A. Oh! I remember his being there.

Q. I mean about these questions and answers? A. I remember it was the most extraordinary contumacy I ever saw in my life. I could not get anything out of him.

Q. That is not exactly becoming to you as a witness, and is not an answer to my question. A. Why not? You asked me if I remembered anything. I do remember that.

Q. I asked you a definite question about your independent recollection or your depending upon this paper, having no possible relation as you see, to the answer that you gave me. A. I don't see that. I remember that the utmost that I could do, I could get no information at all. It was utterly impossible for me with my efforts to—

Q. Still, that is no reason why you should not answer me a proper question? A. I think I did.

Q. I think you did not? A. I beg your pardon; I think I did. I meant to.

Q. I repeat the question? A. Well, what is it?

(The stenographer read the question and answer as follows):

“Q. Do you depend entirely upon these notes? A. Oh, I remember his being there.

“Q. I mean about these questions and answers?” A. For the question and answers I have given, I do. I have a general recollection of the examination, of its spirit and character.

Q. I ask you as to these specific questions and answers which you have read from the stenographer's report? A. I depend entirely upon that.

Q. You depend entirely upon the report? A. Yes, sir—well no, I could not say even that, for I have a general recollection that Durant did say at that time that he had been told of this thing; so don't have me say that I have no recollection about it.

Q. I am seeking to get just what you remember? A. Well, I only say that here are the notes, and my recollection corresponds with the notes so far as I have a definite recollection; beyond the notes I could not say definitely what language was used, though I have a very strong impression, I think I may say a distinct recollection, that Durant did say in the conversation that he had been informed, or that somebody had said so.

By Mr. CURTIS:

Q. Did you hear Judge Barnard say from the Bench, upon that occasion, at any time, that he had driven one set of men, or one set of damned scoundrels, out of New York, and meant to drive another? A. No; I have no more belief that any such expression was ever used by him from the Bench, when I was present, than I have that I am now in another country. I believe the statement is absolutely false; that he never used anything tending to it when I was in Court. I am confident that if any such expression had been used by him, it would have fastened itself upon my memory.

Q. Was Mr. Charles Tracy present during this examination? A. I will refer to the notes and see. I think the names of the counsel are mentioned in these notes.

By Mr. TILDEN:

Q. Have you no recollection independent of them? A. There were, I think, four days on which he was examined, and, if you will allow me to remind you, there were five or six counsel, and who were present on each day you will readily understand I cannot say.

Mr. CURTIS:

May I request that my question may be answered before any other question is put, and then, if there is any necessity for any other question, let it come in. I want to know if Mr. Tracy was present? A. I have no doubt that Mr. Tracy was present at some time of the ex-

amination. I can't say whether he was there all the time or not. The counsel in the case opposed to us were Charles Tracy, William F. Allen, Samuel J. Tilden, W. W. McFarland, Clarence A. Seward and Clark Bell.

Q. Of the counsel you now name as opposed to you in the case, are you able to state who was or was not present on the occasion of Mr. Durant's examination before Judge Barnard? A. Only from the stenographer's notes. Do you mean on the four days, or on this particular occasion?

Q. On this particular occasion. A. Well, I cannot. I have a recollection that at some time of the examination Mr. S. L. M. Barlow was there; Mr. McFarland and Mr. Tracy, and I should say Mr. Clark Bell, but I would not be positive. The safest way is to refer to my notes. Shall I go on to say what I know about the history of the case?

Q. Yes, sir. A. I was saying that Mr. Durant was examined on several occasions. The first occasion was, I think, on the 20th of March. On that occasion I see that Mr. Tracy appeared and Mr. McFarland, and there was an examination of Mr. Durant. I refer to p. 15, for the purpose of showing that we were not able to get any information about these contracts.

Q. Where are the contracts between the Union Pacific Railroad Company and any of these persons? A. There are copies of these contracts at the office of the superintendent, at Nebraska, and the office of the engineer.

Q. Are not the contracts in the office at New York? A. They are not in my charge, if they are there. I have not seen them in two years.

Q. Has the Union Pacific Railroad Company an office in New York? A. Yes, sir.

Q. Has the Credit Mobilier of America? A. Not that I know of.

Q. Have they not an office in the same place? A. They had a desk there.

Q. Had they not a sign over the door in the same place? A. I believe they had.

Q. How lately? A. I don't know. I returned from the West two months since, and observed it was not there."

Then again on p. 17:

Q. Which of the officers of the Credit Mobilier did business? A. Mr. Durant was President, and I think Mr. Ham was Treasurer or Secretary.

Q. Do you know where the office of the Credit Mobilier is now? A. No, sir.

Q. Have you inquired where it is moved to? A. I have, but I didn't ascertain.

Q. Whom did you ask? A. I cannot recollect; one of the clerks, and they said they didn't know."

Then on p. 25 :

"Q. On the 1st of October you made a contract for the road beyond the Ames contract? A. Yes, sir.

"And that contract was then vested in trustees. Was it a part of your stipulation with Davies that the contract should be vested in trustees? A. No, sir; he did do it.

"Q. You didn't suggest it? A. I don't recollect whether I did or not. I made the arrangement.

"Q. Have you ever received any money by way of dividends from any of the trustees? A. My financial affairs are in the hands of my confidential clerk, Mr. Henry C. Crane, and I have not looked at them for two years.

"Q. Is there any property of the company in its office, in Nassau street? A. If there is any it is in the safe.

"Q. Is there any in the safe? A. As I say, it would be in charge of the Treasurer.

"Q. Do you know, as Vice-President, whether there is or not? A. I don't know of there being \$50,000, over night, for some time.

"Q. And the President is not here? A. No.

"Q. And you have sole charge? A. The finances are under the charge of a special committee.

"Q. Do you know that there is in the safe of the company one single bond or property of any kind? A. I do not.

"Q. Was there any there yesterday morning? A. I think not."

I read this for the purpose of showing that at this time all the property of the company had been abstracted from the safe of New York, and if there was ever an occasion for the Court to vindicate its jurisdiction by laying its hand upon whatever there could be here, to compel obedience to its mandates, it was this. That is the testimony on the 20th. He was examined again on the 22d. Those notes, I say, have been mislaid. On the 23d he was examined again, and there I see that Mr. Barlow appeared and Mr. McFarland. When I say he was examined on the 23d, I mean to say that the proceeding was continued on the 23d. I don't know whether his examination was actually taken that day or not. I see it is a discussion between counsel chiefly, if not entirely. I should think, in glancing over these notes, that that day was confined to a discussion of counsel, and that Durant was not examined then.

Q. Was it the result of that examination—of any examination of Mr. Durant, or of any officer or officers of the Company, in Court, that put you in possession of the information that you was in search of? A. Not at all. I have said already, and I repeat, that in my judgment the orders that were obtained, every one of them, were necessary to vindicate the jurisdiction of the Court, and were made necessary by the persistent refusal of the defendants to give information, and I don't think that anything that was demanded on the part of the plaintiff in respect to information was beyond what the plaintiff, as stockholder and plaintiff, had a clear, legal right to, and the refusal of it was

an unjustifiable refusal; and if the Court had not taken the steps that it did for the vindication of its authority, it would have been wanting in its trust and its duty to the people of New York. These are my views, Mr. Curtis, of the legality and propriety of these various orders, and I will specify the rest of them. On the 29th, Mr. Durant was examined again, and he answered in regard to this safe, as you have been already informed by my reading extracts from these minutes, and I will not take up the time by reading any more of them, but I will call your attention to two or three pieces of evidence in respect to the contumacy of the defendants, which I think it important to have. One is an affidavit of William M. Tweed, Jr., Receiver, sworn on the 19th of March, immediately after he was appointed.

(Marked "Charge 9, Q2.")

On the 23d of March there was a second supplemental complaint, and a further injunction and order to show cause. On the 27th of March we were served with an order made by Judge Rosekrans, which I suppose is in the case.

(Page 126, printed case, previously marked "Charge 9 V.")

On the 30th of March, was an order for continuing the Receiver, and after argument made by Judge Barnard.

(Page 190, printed case, previously marked "Charge 9 D1.")

And in it is this provision about breaking open the safe. This was after argument, and after the examination of Mr. Durant.

(The examination of this witness was suspended for the purpose of examining Mr. Phyfe.)

JAMES H. PHYFE, called for the prosecution, sworn. Examined by Mr. STICKNEY:

Q. What is your position connected with the Hudson River R. R.?
A. Superintendent's clerk.

Q. What is the paper that you now produce? A. The Time-table of the Hudson River R. R.

Q. Does that Time-table which you now produce, show the times of the trains running on the Hudson River R. R. on the 6th of August, 1869? A. It does.

Q. When did the trains leaving Poughkeepsie in the afternoon or evening of that day leave Poughkeepsie, and when did they reach New York city? A. We had one which left Poughkeepsie at 1 o'clock in the afternoon, and reached New York at 3:30.

Q. The next? A. One at 3 o'clock from Poughkeepsie, which reached New York at 6:15. Another at 7 P. M., Poughkeepsie, arriving at 9:30.

By Mr. PRINCE:

Q. Those were all? A. We had several other passenger trains; that is all for the night and the afternoon.

Q. And those times were correct for how long a later period? A. Up to and including the 29th day of August.

Q. 1869? A. Yes, sir.

DAVID DUDLEY FIELD, re-called :

WITNESS :

The next proceeding that I will mention is a petition of which we received a copy on the 30th of March, a petition of Oliver Ames and Oakes Ames, to remove this cause into the Circuit Court of the United States, and on the 12th of May, that petition was argued before Judge Clerke, and the motions of both denied.

By Mr. CURTIS :

That was an application made on the ground that they were citizens of another State? A. Yes, sir; on the 6th of June, 1871—in order that I may finish up this part of the history of the case—on the 6th of June, 1871, it was ordered (reading the order, which is marked Charge 9, R2); my recollection is, that it was asked for by Hammond & Pomeroy, the attorneys for the Union Pacific R. R., who were substituted for the previous attorneys, and that they received these books and papers from Mr. Tweed; that I understood; I was not present; in the whole course of this litigation in the State Court, so far as I remember, no application was ever made by any defendant to vacate any injunction or to modify it, except one, which was mentioned by Mr. Bell, one modifying the injunction of the 12th of March, I think; I think that the attitude of the defendants has been one of resistance throughout: Now, coming to the Circuit Court of the United States; the discussion there first began before Mr. Justice Blatchford, the last of March or the first of April, 1869, when a motion was made for a stay of proceedings, and a motion also was made for a *mandamus* to the State Court; afterwards it was arranged between the counsel and parties that the whole question and the status of the case should be argued before Judge Nelson; the argument was begun before him on the 27th of April, 1869, and adjourned, not finished that day, but adjourned to the next day.

The next day he was ill, and the motion was adjourned until the 26th. Continuing ill, it was further adjourned to the June term. At the June term he didn't appear, for the reason he was ill, and the argument was not resumed until the 5th of May, 1870. He didn't decide the motion until February, 1871, when he vacated the injunction granted by Judge Cardozo. That was a part of their motion. He denied our motion to remit all our papers to the State Court, and the case is now in the Federal Court.

Q. Undetermined as to its merits? A. Entirely undetermined as to its merits. The suit in the State Court, containing both a legal and an equitable cause of action, was divided in the Federal Court into two suits, one a suit at law to recover damages, and one a suit in equity. The suit at law is at issue. In the suit in equity the defendants demurred, and the argument on the demurrer was postponed until a day which happened to be subsequent to the murder of Mr. Fisk. We made an application to revive the suit in the name of his executrix. That was resisted upon the ground that we must file a Bill of Reviver. The Judge thought it was not necessary absolutely to file

a Bill of Reviver, but that a petition would answer. Mrs. Fisk was out of town, and it was not convenient to get the petition, so that the case stands without any reviver as yet. In a kindred case of Pollard vs. the Union Pacific Railroad Company, the Company itself answered without disclosing any particulars, which were called for specifically, and the other defendants demurred. The demurrer was argued before Judge Blatchford, and finally, on the 9th, I think, of March, he made an order that they answer in thirty days.

Q. And so it stands now? A. And so it stands; the spectacle being, that, notwithstanding every effort which the plaintiff has been able to make, so far as I could judge of the efforts which have appeared to have been made from the 3d of July, 1868, to this day, the 27th of March, 1872, we have not been able to get the oath of these men as to matters for which we asked on the original request, made in July, 1868.

Q. What was the question, as it was developed in the Federal Court and in the State Court, with respect to this action being or not being removed from the State Court into the Federal Court? A. It was this, which I say with leave from my friend Mr. Tilden, who differs from me entirely in regard to the construction of Judge Nelson's decision.

Q. That is not a part of the testimony, I suppose? A. No; I don't want that down, of course. The position is this: There were, as you understand, four petitions for the removal of this case into the Circuit Court of the United States; one is the petition which I have read, of the Union Pacific Railroad Company—of Mr. Cisco, Macy, Lambard, Dillon and Durant. The second was the petition of the other defendants, excepting Davis—a petition purporting to be of the *Credit Mobilier* of America—Benjamin E. Bates, John Duff, Josiah Bardwell, John B. Alley, Ebenezer Cook, F. Gordon Dexter, Charles A. Lambard, William M. Macy, John F. Tracy, George Ashmun, Jesse L. Williams, Samuel MacKee, James S. Rollins, James Brooks, Edwin D. Morgan, Oakes Ames and Oliver Ames, by Charles Tracy, their attorney. The third was the petition of Oliver Ames, by Evarts, Southmayd and Choate, his attorneys; and the fourth was the petition of Oakes Ames, by the same attorneys. Now, when the case came before Judge Blatchford, he held, in substance, as I understand him, that upon the petition, under the law of July 27th, 1868, one defendant petitioning to remove the cause, where there were the number there is in this cause, would send the case into the Circuit Court of the United States, whether all the rest of the defendants were opposed to it or not.

MR. TILDEN:

Q. Wasn't it if that one defendant was the corporation defendant?
A. You can see about that yourself.

MR. TILDEN:

Q. I merely wanted to bring that to your mind? A. That corporation was one. Of course, it is all a matter of report.

Mr. CURTIS :

I mean to develop the whole thing in all its bearings now.

The WITNESS :

I think that that was the purport of Judge Blatchford's opinion ; but it is reported, and you will see for yourself. When the matter came before Judge Nelson, and he finally decided it, as I understand his opinion, he differed entirely from Judge Blatchford, and held that the case could only go as each defendant applied.

Q. For that defendant alone? A. Yes, sir ; that the first petition carried the case as to them, and so with the rest. Well, the case, according to that, is now in the Federal Court as to all the defendants who petitioned first and second, and third and fourth ; but, as to Mr. Davis, it is in the State Court still, according to my view of it, even upon Judge Nelson's own views.

Q. We won't argue it. I want to ask you another question. When that question arose under those various petitions for the removal of this cause, it was apparent, wasn't it, that it was a complex question, depending upon two branches of the judicial power of the United States, the one branch being that it gives jurisdiction to the court of the United States on account of the subject matter, and the other branch being what gives jurisdiction to the Courts of the United States on account of the character of the persons? A. Yes, sir.

Q. And whoever had to consider or judicially pass upon that question had to act, did he not, upon those two elements of the case? A. Yes, sir.

Q. The parties defendant in the suit of Fisk, as it stood in the State Court, were the corporation itself, sundry officers of the corporation in their personal capacity, the *Credit Mobilier* as another corporation, and sundry officers of that in their personal capacity. Those constitute, if I understand rightly, the defendants in the action? A. And also the contractors—those who had made these fraudulent contracts, as we allege.

Mr. PARSONS :

Q. And also the inspectors of election? A. They were brought in by supplementary complaint, and not by original complaint.

Mr. PARSONS :

Q. Who is Davis? A. Davis is the contractor for the last 247 miles of the road ; that is, there was first a contract made with another party ; Davis is the contractor for the last portion of the road between Ogden and the Oakes Ames portion.

Examination resumed by Mr. CURTIS :

Q. A Judge of the State Court, called upon to act upon such a question as that, might decide it, one way or the other, correctly or incorrectly, according to another standard of judgment, without being in-

fluenced by any improper motive, might he not? A. Why, of course. I will add, Mr. Curtis—I will wait to hear your question, however.

Q. Are you aware of any orders made by Judge Barnard in that litigation not authorized or justified by the facts and circumstances affecting the papers on which they are purported to have been made? A. I am not.

Q. Are you aware of any orders made by Judge Barnard in that litigation which were grossly inconsiderate, partial, arbitrary, and contrary to the due course of law? A. I am not. I do not think there was an inconsiderate order made in the case by him.

Q. Or a partial one? A. No, sir; I do not think there was a partial order.

Q. Or an arbitrary one? A. Not at all.

Q. Or contrary to the due course of law? A. Not at all; on the contrary, let me say, it is my firm conviction that the orders made in that case savoring of coercion were all rendered necessary by the course of the defendants; that assuming that the case was in the State Court, it was the duty of Judge Barnard to make the orders that he did; whether the case was in the State Court or in the Federal Court was a question of law, in regard to which counsel may differ, I apprehend, without either supposed to be wicked or grossly ignorant, and in respect to which the counsel in this case for Mr. Fisk, Mr. Stoughton and myself, entertain no sort of doubt, that when the case goes to the Supreme Court of the United States, it will be sent back to the State Court as not having been removed in any part of it. I say that is my opinion, and I believe it is the opinion of Mr. Stoughton.

Q. Are you aware of any orders made by Mr. Barnard in that litigation, at the instigation of and in collusion with James Fisk, Jr., the plaintiff in the action? A. I am not.

Q. Are you aware of any order made by Judge Barnard in that litigation with the intent thereby to enable Mr. Fisk to unlawfully extort money from, and otherwise wrong, injure and oppress the said Company and its stockholders? A. I am not.

Q. Are you aware of any unlawful conspiracy entered into by and between Judge Barnard, James Fisk, Jr., and other parties unknown, for the perversion and obstruction of justice, and the due administration of law in respect to any matter in which Judge Barnard judicially acted in that litigation? A. I am not aware of any; I don't believe that there was any.

Q. I forgot to ask you a single question in regard to some papers connected with the Albany and Susquehanna case, but I will postpone that until the witness is examined on the other matters.

Mr. PARSONS:

If it is a single question, you can ask him.

Mr. PRINCE:

You had better postpone it until you can put it in its proper place.

The WITNESS:

Let me add to what I have said. You will, of course, understand, in the narrative I have given, that I have spoken, not merely from my personal knowledge in all cases, but from my general acquaintance with the litigation. If you desire to know the particular knowledge I have, please ask me. I suppose, in point of fact, I do not know personally one quarter of it.

Cross-examination by Mr. PARSONS:

Q. Do you claim to have personal knowledge of any considerable proportion of the facts in reference to which you have undertaken to testify? A. Of a considerable proportion, no doubt, but there is a great deal of which I have no personal knowledge, which I know only from my general acquaintance with the litigation. I do not know that, I can be more specific.

Q. Did Mr. Fisk claim to own absolutely more than six shares of the stock of the Union Pacific Railroad Company? A. What he claimed to own appears by his complaint, and I must refer you to that.

Q. We prefer to have an answer. A. That is the answer I give you.

Q. Do you decline to answer the question? A. I do not decline to answer anything except to say that the claim is in writing, and is in the complaint.

Q. Did Mr. Fisk, in his complaint, pretend that he owned more than six shares of the stock of the Union Pacific Railroad Company? A. That is a matter of construction which you can judge of as well as I.

Q. Do you mean that you are incapable of coming to a conclusion in reference to that matter? A. I will answer that the question appears to me impertinent, and I will give you no further answer unless compelled.

Mr. PARSONS:

Mr. Prince, I may just as well say at the start, that we do not propose to be met by answers of that kind, unless the Committee shall come to the conclusion that our questions are impertinent.

Mr. ANDREWS:

Does not the complaint show for itself?

Mr. PRINCE:

There is no question about that. Mr. Field has been giving, all the way through, his own conclusions as to every paper which has been put in, and it is simply, whether, on cross-examination, they have not a right to the same kind of testimony which the witness has been giving. A. That is a mistake; I have not been giving the construction of the complaint; I simply said that was the claim.

Mr. PRINCE :

You have given a narrative of the matter in your own way. A. I submit to you if this question is not offensive. Will you read the question?

(The question was read.)

The WITNESS :

That is to say, what was a fair construction of the complaint.

Mr. PRINCE :

The question is, whether it is not drawn out by your own answers? A. What did I answer to draw it out? I said, "as it appears by the complaint."

Mr. PRINCE :

I suppose, Mr. Parsons, in a matter of this kind, where it appears on the face of the document, that you have not strictly the right to inquire.

Mr. PARSONS :

The witness, on his direct examination, has spoken with perfect freedom of the contents of the papers, and we feel we have the right to insist that there shall be the same willingness on his part to answer our questions. A. This question, I submit, is offensive, because it is offensive, and that is enough, and I submit to you, Mr. Prince, if Mr. Parsons can put a question that is offensive?

Mr. PRINCE :

I think you had better withdraw the question, Mr. Parsons.

Mr. PARSONS :

We do not feel called upon to do so. My question substantially asks this: Mr. Field, on his direct examination, has said that the suit was brought by Mr. Fisk, so far as concerns stock owned by him, as the owner of six shares. My question asks whether, in that action, he claimed to be the owner of more than six shares of stock? and I submit that it is not only proper, but eminently suitable, upon a cross-examination. A. I submit that it is not at all, and it appears plainly enough by the complaint what it is.

Mr. PRINCE :

It appears to me that it is proper, considering the testimony you gave on your direct examination.

The WITNESS :

Well, I thought you said that that was not a proper question to be put.

Mr. PRINCE :

Under ordinary circumstances I do not think it would be, if you

hadn't testified on the same question in your direct examination, giving your own views of the complaint. As an original question I do not think it would be proper.

The WITNESS :

We may as well understand here, if the same course of examination is to be pursued as was pursued the other day—a hundred dozen questions one after the other, trifling and irrelevant—why I shall not submit to it unless I am forced. Suppose you say—how far is it from here to the moon? and I were to say I don't know. Is it a hundred thousand miles? I don't know. Well, how near to a hundred thousand miles? I don't know. Is it ten million of miles? I don't know. Well, would you say it was between such and such numbers? Now, I think this is but trifling, and it is not a proper mode of examination, and I do not propose to submit to any such mode of examination at all; whatever is proper I shall answer according to my own view, and I shall endeavor to be guided by the view of the Committee, except where I think my own rights are infringed.

Mr. PRINCE :

I think that question had better be withdrawn, as far as the record is concerned.

Mr. PARSONS :

We shall not withdraw it.

Mr. PRINCE :

It seems to me that that is the proper way.

Mr. PARSONS :

If Mr. Field will answer whether Mr. Fisk claimed in the suit to be the owner of more than six shares of the stock of the Company, I shall be satisfied to take an answer to that question, which will obviate the necessity of pressing for an answer to the other.

Mr. PRINCE :

I think, from the course of the testimony that has been given, that is competent.

The WITNESS :

I wish to know what direction is given to me.

Mr. PRINCE :

I said that I considered that, from the course of the testimony already given, the question is competent. A. Well, I shall have to ask you to get the Committee together to decide that. If it was not offensive in its form I would not say so.

Mr. PRINCE :

I do not think it is.

The WITNESS:

I think it is. I object to the question, as to my being incapable of answering.

Mr. PRINCE:

I stated some time ago that that question should be stricken out.

Mr. PARSONS:

If Mr. Field answers my first question I am willing that the second question shall be withdrawn, but not otherwise.

Mr. PRINCE:

It is not the kind of question we want on our minutes.

Mr. PARSONS:

Do you mean the latter one?

Mr. PRINCE:

Yes, sir.

Mr. PARSONS:

If Mr. Field answers the first one it will obviate the necessity of answering the second one. We do not desire that anything that has taken place, which has appeared on the official record, shall be stricken out.

Mr. PRINCE:

I do not think that question is a proper one to ask.

Mr. PARSONS:

The Committee can overrule the question, and then the ruling will appear upon the record.

Mr. CURTIS:

On the theory on which you have carried on this examination, certainly the Committee must have a control over its record, and they must strike out. I do not approve of the theory, but upon the theory, I must say the Committee ought to have control over the record.

Mr. PARSONS:

Has any testimony been stricken out?

Mr. CURTIS:

Yes, sir. Answers have been stricken out.

Mr. PARSONS:

I do not know of any.

Mr. ANDREWS:

I understand that testimony has been stricken out.

MR. PARSONS :

I know of no case where testimony has been stricken out.

Q. State, if you please, whether or not, in his complaint, Mr. Fisk claimed to own absolutely more than six shares of the stock of the Union Pacific Railroad Company? A. Mr. Fisk claimed, in his complaint, that he became entitled to twenty thousand shares, and to all the benefit thereof. That is in the third article. Having stated that he had subscribed for twenty thousand shares of stock in New York, that he then became entitled to said shares and all the benefit thereof. To be entitled to said shares and the benefit thereof is equivalent to saying that he is the owner, in my opinion.

Q. Did Mr. Fisk, in his complaint, say anything in respect to six shares of the stock of the Union Pacific Railroad Company? A. You have the complaint before you, and if you will look at the ninth article of it you will see what he says.

Q. Did he there say that he was also the owner and holder of six other shares of the stock of the said Union Pacific Railroad Company? A. You have read a part of the ninth article.

Q. Did he in his complaint, also claim to be entitled to twenty thousand shares of the stock of that Company, for which he asserted he had become a subscriber? A. Certainly, so I understand it.

Q. You stated, on your examination by Mr. Curtis, that Mr. Fisk had subscribed for twenty thousand shares of the stock of that Company. Is that one of the statements in your direct examination which you make from personal knowledge? A. Only so far as this: I have seen the original subscription book in the city of New York, and I have now in my possession here a copy from it, which I will give you, by which you will see how the matter stands.

Q. I simply ask whether that is one of the statements on your direct examination to which you have testified of personal knowledge? A. I have answered you—that my personal knowledge is the inspection of that subscription book, of which I will give you a copy, and you can judge whether that affords the material for knowledge or not.

Q. Do you know anything of the circumstances— A. (interrupting). Wait a moment, please; I want to have that in. Here is a copy (handing document to counsel).

MR. PARSONS :

No question remains unanswered, and we do not desire this in.

MR. PRINCE :

It seems to be a yes or no question. You have stated a few moments since that a large proportion of the testimony you have given was not of personal knowledge, and you would state as to any particular part whether they were or not. You are asked whether this was from personal knowledge?

THE WITNESS :

I say it is not from personal knowledge, except from inspection of a

subscription book, a copy of the entries which I have here now. You may judge for yourself. There is the name of James Fisk, Jr., written thus:—

Mr. PARSONS:

I hope the Committee will understand that we have not put any question to Mr. Field which calls for any such statement. A. I really don't see how I can answer it otherwise. Suppose I say yes—how does that appear; whether that is a subscription or not is a matter of law. I think it is; another may think it is not. The Company does not think it is. They deny it, but this I know, that there it is; you may judge for yourself.

Mr. PARSONS:

May I proceed with the examination?

Mr. PRINCE:

I should say so.

Q. You also stated, on your direct examination, that Mr. Fisk had tendered to the Company payment for said twenty thousand shares of stock, at the rate of fifty-five per cent.; was that a statement made by you on personal knowledge? A. Not at all; but I think you misapprehend the statement. What I said, I think, was that the claim was so and so—the claim that he had subscribed and had made the tender. I desire to add also, that there is on the subscription book a memorandum which may be taken as evidence.

Q. Is that an answer to my question?

Mr. PRINCE:

I think he has already answered the question.

The WITNESS:

I desire to add now—

Mr. PARSONS:

That is a matter which Mr. Field must arrange with the Committee.

Mr. PRINCE:

The answer seems to be finished.

The WITNESS:

I desire to add to the answer, that from the subscription book I should infer that there was a tender, and if you want to know why, I will give it to you.

Q. Do you know anything about the circumstances under which such tender was made? A. Only from information.

Q. Does that information come to you from James Fisk, Jr.? A. Partly.

Q. Is such information as you had upon that subject from James Fisk, Jr., of that character that you are unwilling to state it? A. Only

that I think it is not proper for me to state anything that I received from my client.

Q. Have you any knowledge what was the effect upon the stock of the Union Pacific Railroad Company of such an order, as Judge Barnard granted on the 18th of March, 1869, appointing William M. Tweed, Jr., Receiver? A. No; I don't think I have any knowledge on the subject.

Q. Have you no information on that subject—no reliable information? A. Well, no; I don't think I have.

Q. Have you any judgment whether such an order would be likely to benefit or depreciate the value of the stock of that Company? A. Well, very little; I know so little about the value of the stock that I really could not tell you whether the order would have the effect to depreciate the stock or not; how the stock was held, by what parties, or in what proportions, I do not know, and did not know, and anything that I should say would be a surmise or guess—scarcely anything more.

Q. Have you any opinion on the subject, whether such an order would be likely to benefit or injure the Company's stock?

MR. PRINCE:

Hav'n't you the facts in relation to this matter?

MR. PARSONS:

We have the facts as testified to by other witnesses. I wish to see what Mr. Field's opinion is.

THE WITNESS:

My opinion on the subject, I suppose, is of no sort of importance, and the inquiry, therefore, is not legitimate.

Q. You have stated that it was supposed that the stock of the Company, including that for which Fisk claimed to have subscribed, was very valuable. Will you inform the Committee what was the effect, in your judgment, upon the value of that stock, of the order which Mr. Fisk himself, through your firm, procured from Judge Barnard, on March 18th, 1869, appointing William M. Tweed, Jr., Receiver? A. I think you have misunderstood my statement originally. I stated that that was a part of the claim, and that was valuable, and read from the bill in the case of McComb. The question, whether I think the order would tend to depreciate its market value, is embraced in what I said to you in answer to your last question.

Q. Did you not understand that, in asking you in respect to the value of the stock of this Company, I alluded to the market value? A. Yes, sir; I did.

Q. You answered on that understanding? A. I answered on that understanding; and that when the claim was spoken of, I referred to intrinsic value.

Q. You have mentioned certain circumstances, explaining, according to your evidence, the delay in the further prosecution in the Federal

Court of the suit of *Fisk vs. The Union Pacific Railroad Company*. Are you aware of attempts made since the death of Fisk for a settlement of that litigation? A. I have been informed that some negotiations were going on, but the information which I got was from my client, or her agents, and I do not think it is proper for me to give it.

Q. Is it not the fact that the plaintiff in that litigation is very desirous to settle, abandoning all claims, provided she may be relieved from all responsibility? A. I never heard her say one word on the subject.

Q. Is not that the fact? A. I can give you no other answer than that.

Q. Do you not know that the only obstacle to the withdrawal by the plaintiff of her claim in that litigation is the claim which you personally have made to fees? A. That question, I think, is an improper one for a lawyer to put, and it involves conversations between my client or her agents and myself, and I decline to answer you.

Q. Did you not intend, by your direct examination, to convey the idea that there was a desire on the part of the plaintiff to prosecute that litigation, which had been embarrassed by Judges Nelson and Blatchford, and that their action was the reason why the suit, on this 27th day of March, 1872, was at a stand-still? A. No; you have got it wrong. I did not mean to say that the action of Judges Nelson and Blatchford had embarrassed us. I don't think I used any such expression. I meant to say, and I repeat, that every effort that we could make on behalf of the plaintiff, in securing an answer, upon oath, as to matters of which I have spoken, has been baffled until now. I stated that the Fisk suit had abated by the death of Mr. Fisk. Up to the time of his death, he never gave me the slightest intimation that he wanted to stop the prosecution of the suit, or that he wanted it delayed in any way.

Q. Are you not now breaking the obligation to which you have referred, which prevents—

Mr. PRINCE:

I don't see that that is material.

Mr. PARSONS:

The question is whether Mr. Field shall be permitted, at will, to break the privilege or not.

Mr. CURTIS:

Of course, the witness has the right to waive the privilege, whenever he chooses, always.

The WITNESS:

I have a right to say that such a thing did not happen.

Mr. PARSONS:

We do not challenge the right at this time, but merely the propriety.

Mr. PRINCE :

The witness is standing on his rights.

Q. Did you not, by your direct examination, intend to convey the idea that the suit was, at this present time, at a stand-still, against the wish of the plaintiff? A. I did not mean to say anything at all in regard to the condition of the suit of Mr. Fisk, at this moment, as standing still, against her wishes. I stated exactly what had occurred. I stated the condition of the suit of Pollard. I do not know or believe that the Pollard suit has been stayed, one single moment, by any interference of Mr. Pollard at all.

Q. Is Mr. Pollard your client? A. Mr. Pollard is my client.

Q. In the suit to which you refer? A. Yes, sir.

Q. Will you make the same statements in reference to the Fisk suit?

A. That Mrs. Fisk is my client?

Q. No. A. What?

Q. That that suit is not stayed by any wish on the part of Mrs. Fisk? A. I have already answered that. I have had no consultation with Mrs. Fisk, personally, about it; and whatever I have had to do with her or her agent, are matters which I shall not disclose.

Q. Is it not the fact that Mrs. Fisk desires to play quits in that suit, and that the only obstacle is your insisting that \$25,000 be paid you for counsel fees, as a condition? A. The question I regard as grossly impertinent, and I shall give no answer to it whatever. If another like that is repeated, I shall give a little more satisfactory answer.

Mr. PARSONS (to the Committee) :

Mr. Field has been twice examined during this investigation. I think we have heard enough from him, about ignorance and impertinence, on his first examination, and I do not propose to submit to any such language. If Mr. Field objects to the questions put, there is a proper way of appealing to the Committee.

The WITNESS :

What is a proper way of appealing to the Committee, when a lawyer puts you a question that he would not dare to put anywhere else, and which is offensive. I think that is a grossly impertinent question, and I think the counsel knows it. I think it is intended to be offensive, and, therefore, I treat it as such.

Mr. PARSONS :

Mr. Field is a sufficiently good lawyer to know, when he puts himself on the stand as a witness, that one question in regard to his testimony is the credit to be given to it, and that that depends upon the question of the interest which the witness has.

The WITNESS :

Mr. Parsons knows perfectly well that the language he used now is impertinent, and cannot be endured, and will not be endured.

Mr. PRINCE :

This matter has gone far enough, and too far.

The WITNESS :

I won't allow any lawyer to talk to me about my fees, and what I claim.

Mr. PRINCE :

If you insist upon that, I shall say that the question is an improper one.

Mr. PARSONS :

I take it, that Mr. Prince will not express any opinion, without giving us the opportunity of a suggestion upon the subject. I think we could demonstrate to any Court or Committee that the question is proper.

Q. You have produced and testified about certain draft affidavits, presented to Mr. Ham, Mr. Durant, Mr. Cisco, and Mr. Dillon. Were these affidavits, when tendered to these gentlemen, accompanied by the papers, or by copies of the papers, which the affidavits called upon them to verify? A. The affidavits contained no more, I suppose, than I read, and I do not know that any paper went with them.

Q. The affidavits, as thus drafted, refer to certain papers as being annexed. For example, "that annexed hereto, marked 'A,' is a list of the Directors of the Credit Mobilier of America"; "that annexed hereto, marked 'E,' is a copy of all contracts entered into between the Union Pacific Railroad Company and the Credit Mobilier of America." Were any such papers annexed to the draft affidavits? A. I take it for granted there were not; and I take it for granted that you and everybody else understand that it was expected that the persons who would make the depositions would annex the papers.

Q. Was the object, then, to obtain, in that manner, evidence in respect to papers, copies of which are spoken of in the draft affidavits as being annexed? A. Of course.

Q. You have spoken of certain proceedings, orders and otherwise, in reference to which you have made the statement that they were a necessary consequence of the defiance of the Court, to which you have referred. Was the order of Judge Barnard, granted on March 18th, 1869, appointing William M. Tweed, Jr., Receiver, one of the papers to which you refer, in that connection, as being a necessary consequence of that defiance of the Court? A. I think it was. I think the order would never have been granted if the defendants had shown proper submissiveness to the orders of the Court, and given the information asked at the beginning of the suit.

Q. Was not the action, to which you refer as being in defiance of the Court, the attempt of the Company to remove and effectuate the removal of the case to the Federal Court? A. No. There was studied, continued, persistent contempt, all along, from the commencement of the suit, and my impression is that, during that time, an

attachment was issued, and that the Sheriff was about arresting one of the parties, who hid himself in a safe, to avoid the arrest. I give this from recollection. I had no personal knowledge of the matter, but that is my impression. Such a fact occurred, as I am told, in the progress of the litigation. I will add further, that I believe the order.

Q. I don't remember that I asked, in my question, for the belief which Mr. Field entertains upon any subject. I must decline to receive Mr. Field's belief. A. I think the question was, whether I believed there was any intention to defy the authority of the Court, in regard except to the removal. Wasn't that the question?

(The question was here read by the stenographer, as follows):

Q. Was not the action, to which you refer as being in defiance of the Court, the attempt of the Company to remove and effectuate the removal of the case to the Federal Court? A. What was my answer.

(The stenographer here read the answer, as follows):

A. No. There was studied, continued, persistent contempt, all along, from the commencement of the suit, and my impression is that, during that time, an attachment was issued, and that the Sheriff was about arresting one of the parties, who hid himself in a safe, to avoid the arrest. I give this from recollection. I had no personal knowledge of the matter, but that is my impression. Such a fact occurred, as I am told, in the progress of the litigation. I will add further, that I believe the order.

Q. When you said "No, sir," you answered my question completely? A. No, sir; I did not; I believe an act of Congress was gotten for the purpose of evading the jurisdiction of the Court, and that what subsequently happened was but carrying out the original intention.

Q. Was not the attempt of the Company, by a removal of the case to the Federal Court, thereby to escape the jurisdiction of Judge Barnard and of the Supreme Court of the State of New York, legitimate and appropriate? A. That is a question to which you can give an answer as well as I.

Mr. PRINCE:

That may very well be; but that is no reason why it should not be answered. A. What? The question whether it was legitimate?

Q. Was not the attempt of the Company, by a removal of the case to the Federal Court, thereby to escape the jurisdiction of Judge Barnard and of the Supreme Court of the State of New York, legitimate and appropriate? A. If you ask my opinion in regard to the removal and the getting of an act of Congress for the purpose, I have to answer that, in my judgment, the defiance of the Court began when the suit was commenced, and that the order to extend the time for showing cause, from the 21st of July to the 4th of August, was got for the purpose of enabling the defendants in the meantime to procure an act of Congress, and I do not think it is proper for defendants to get an extension of time to argue a motion, with a view of applying for legislation in the interim.

Mr. PARSONS :

What I asked was, whether the attempt of the Company to remove the litigation from the jurisdiction of Judge Barnard and of the Supreme Court of the State of New York to the Federal Court, was not a suitable and legitimate legal proceeding?

Mr. CURTIS :

You have changed the phraseology of your question a little.

The WITNESS :

What is the question?

Mr. PARSONS :

Suitable and legitimate? A. After the law was passed it was suitable to apply for a removal, under that law. According to my view of the law, this case was not within it, and I do not think that it will so be held finally.

Q. Was not the attempt of the Company to remove made under the law? A. Certainly; it was attempted to be made under that law; it purported to be made under that. I will say, instead of *attempted*, that it purported to be made under that law.

Q. Was not the object of the affidavits tendered to Mr. Ham, Mr. Dillon, Mr. Cisco, and Mr. Durant, to obtain copies of or information in reference to papers which did not belong to either of those gentlemen, and also to obtain evidence from books which were not their's? A. Whether the books of the Company belonged to those persons or not, you know as well as I. They were officers of the Company, and the proper persons to procure information of about the books, and I conceive that it was a perfectly proper thing to ask them to give extracts or copies from the books in respect to the matter in which a plaintiff and stockholder was interested.

Q. Do you not take the position, that the conduct of the case on the part of the plaintiff throughout was eminently proper? A. I think it was proper. I do not now recollect any instance in which the plaintiff applied for any order that ought not to have been granted.

Q. Who obtained the order of Judge Cardozo, of July 17th, 1868? A. I am unable to say.

Q. Did you? A. I think not.

Q. Will you look at the affidavit of James Fisk, Jr., dated July 17th, 1868, sworn to before W. H. Morgan, a Notary Public, upon which was made Judge Cardozo's order of July 18th, 1868, and state whether, in the judgment of yourself, as a lawyer, that affidavit justified that order? A. I think it did. I think that affidavit, and the proceedings that had taken place in the meantime, justify it.

Q. My question is, whether that affidavit, upon which the order purports to be made, justified the order? A. Let me look at it. (After examining.) I think it did.

Q. Do you make that statement after having read the affidavit, and

refreshed your memory as to its contents? A. I have read the affidavit, as you know, and I give you that answer.

Q. You entertain no doubt on that point? A. I have answered you all I shall.

Q. Were not the circumstances under which was made Judge Cardozo's order of July 30th, 1868, appointing Amasa A. Redfield Referee to take the depositions of John Doe, Richard Roe, and James Jackson, these: That Field & Shearman sent a clerk or messenger to the office of the Company, with the draft of an affidavit, caused such clerk or messenger to present that affidavit to any clerks whom he happened to find in the office, and upon the refusal of such clerks to swear to such affidavit, procured from Judge Cardozo an order for the deposition of such clerks, under the names of John Doe, Richard Roe, and James Jackson? A. You have the papers before you, and they speak for themselves.

Q. Assuming those to be the circumstances, what is the judgment of yourself, as a lawyer, as to the propriety of that procedure? A. That is a hypothetical question, which I do not answer.

Q. Look at the affidavit of Richard E. Deyo and Charles F. Bauerdorf, upon which was made, by Judge Cardozo, his order of the 30th of July, 1868, referring it to Amasa A. Redfield to take the depositions of John Doe and Richard Roe, and state what is the judgment of yourself, as a lawyer, of the propriety either of the application to Judge Cardozo, or of Judge Cardozo's order? A. I think it was perfectly proper to grant the order upon those affidavits and papers.

Q. And perfectly proper to apply for it? A. Of course, I do.

Q. You have spoken of certain orders, one granted by the Hon. J. H. McCunn, Justice of the Superior Court, as being precedents for the order granted by Judge Barnard in the suit of Fisk against the Union Pacific Railroad Company, enjoining the election; were any such orders of which you speak, as precedent orders, granted upon the state of facts upon which Judge Barnard made his order, or as were presented to him by the papers, upon which he made his order? A. That I am unable to tell you, because I haven't examined the complaint in this case; I have referred to the injunctions themselves.

Q. Is it fair to speak of those orders as precedent orders, unless they were made upon substantially the case presented to Judge Barnard for his order? A. Undoubtedly it is. The orders show that it is within the jurisdiction of the Court, and proper, as I understand them, to enjoin an election when there is a dispute about a certain portion of the stock, which might affect the result of the election. No harm could possibly come, in my opinion, from enjoining the election. The old officers would hold over. Persons previously employed would be there, perfectly competent to manage the affairs of the corporation. The corporation was in gross contumacy, as I understand, and I think it was a proper thing to prevent them from doing any act whatever, until they submitted to the jurisdiction of the Court.

Q. Were you not aware that the day for the election of Directors for the Union Pacific Railroad Company was established by act of

Congress of the United States? A. I don't remember whether it was; I don't remember at all whether I knew it, was established by act of Congress or by by-law; I don't remember at all.

Q. Is it not a material point as bearing upon the propriety of the injunction order, whether the election day was simply established by the by-laws of the Company, or by the charter of the Company? A. Not at all; if the old officers held over until the new election, that carried with it the right of holding an election, whenever there was not an election at that time.

Q. By the charter of the Company did the old officers hold over? A. I suppose so.

Q. Have you any knowledge on that subject? A. At this moment, I don't remember, but that has been my impression all along.

Q. Did you inform yourself on that subject before taking the responsibility of enjoining that election? A. I don't remember.

Q. Did you submit to Judge Barnard, in obtaining the order enjoining that election, any evidence, or any authority upon that subject? A. Your question implies that I applied for the order myself, which I didn't.

Q. Was any such information or evidence furnished to Judge Barnard, by the papers upon which application was made to him, for the order? A. I don't know.

Q. Do you not know the papers upon which that order was obtained? A. No further than appears from the papers in the case; I did not obtain the order, and I did not draw the complaint; application may be made for an order by one counsel, and the rest may be left for other persons to do.

Q. Have you not, on your direct examination, produced that very order, and the papers upon which you testified it was made? A. Or papers, upon which I suppose it was made—upon which it appears to have been made—certainly.

Q. Did you use the expression, on your direct examination, upon which you suppose it was made, or upon which it appeared to be made? A. I don't know whether I did or not; I referred to the injunction, as an injunction granted upon the papers, appearing in the case, as I supposed it was so, but I have no personal knowledge on the subject; I saw the injunction, I have no doubt.

Q. Did these papers inform Judge Barnard on that subject? A. Which papers; the supplementary complaint?

Q. The papers upon which Judge Barnard was asked for that injunction order. A. Whether they did or not is a question of law, and you can judge of that as well as myself; the original complaint referred to the Charter of the Company, and I suppose that the Court takes judicial notice of all acts of Congress relating to that Company, and that he knew that perfectly, or might have known it, judicially, and that the original and supplementary complaints were before him, and such affidavits as have been read.

Q. Were the orders of which you spoke, in your direct examination, as precedents for the injunction obtained from Judge Barnard, orders

absolutely enjoining an election? A. You have them before you, and I prefer that you should construe them for yourself; I have stated, and all that I mean to state is, that I think the precedents of these injunctions justified this injunction.

Q. Did they not differ essentially from the order which you first obtained from Judge Barnard, in the very respect that they were not orders absolutely enjoining an election? A. You can judge, by comparing them yourself; I do not feel called upon to compare them and explain the difference between the two.

Q. Did you not examine them, before you permitted yourself, on your direct examination, to speak of them as precedent orders? A. Certainly, I did.

Q. Were you not, in designating them in that way, familiar with their contents? A. Why, certainly.

Q. Do you mean to adhere to your statement, that they are precedent orders? A. I mean to say that I think they justified that order.

Q. Do you mean to adhere to your statement, given by you in your direct examination, that they are precedents for the order obtained from Judge Barnard? A. I have given you one answer, which I suppose is sufficient.

Mr. PARSONS:

Mr. Field stated, upon his direct examination, that these orders to which he has referred were precedents for the order obtained from Judge Barnard. We ask him, in reference to that—and I think we are justified in the question—whether he still insists upon that opinion?

Mr. TILDEN:

Mr. Field always does insist upon his opinions.

Mr. PARSONS:

Mr. Field is under oath now, and we desire to know whether he still insists upon his opinion, under oath?

The WITNESS:

If by that is meant that I shall state one thing when I am under oath and another when I am not under oath, I shall consider it as an impertinence.

Mr. PARSONS:

I do not feel called upon to take notice of any such language.

The WITNESS:

I know you perfectly well, Mr. Parsons.

Mr. PARSONS:

You know nothing against me.

The WITNESS:

I do, and that is enough.

MR. PARSONS :

I hope you will disclose what you know against me to everybody, and anybody. You may put it in the newspapers.

The WITNESS :

There is no occasion to do that.

MR. PARSONS :

There is no objection on my part that it shall be done.

The WITNESS :

This is not the proper place to do it, that is all.

MR. PARSONS :

Will the Committee inform me whether I am justified in asking Mr. Field if he adheres to his opinion ?

The WITNESS :

The counsel has not informed me that there is any difference between them.

MR. PRINCE :

The question asked you, a few moments ago, was, whether the complaints in those suits were of the same character as those in this suit, and you said you didn't know ? A. Not that I didn't know ; I think I said that it appeared by the papers themselves.

MR. PRINCE :

You were questioned about your recollection of there being an act of Congress, instead of acting simply in the usual way by charter, and you said you could not recollect whether you ever ascertained that or not. You were asked whether Judge Barnard's attention was drawn to that, and you said you didn't know. Now, these matters seem to have been brought to your recollection, and it seems to me that the question is a proper one, and ought to be answered ?

The WITNESS :

Well, let the question be read, and I will see whether it seems to me to be a proper one.

(Question repeated.) A. I don't know that I used any such expression as that, they were precedent orders. It is a very odd expression. It is a very bad sort of English, which I do not think I used.

MR. CURTIS :

I will inquire whether it does not sufficiently appear in what sense Mr. Field regarded those orders as precedents ?

MR. PRINCE

I suppose that those who are cross-examining have a right to the question, at any rate.

Q. Do you still adhere to the opinion that the orders, to which in that connection you referred, were, in any suitable, fair, or legal sense of the term, precedents for the order of injunction obtained from Judge Barnard? A. I do.

Q. In giving that answer, do you have in mind that Judge Barnard's order enjoined the Company from holding any election for Directors "until the right of the plaintiff to the stock described in the complaint is determined in this action," and that there was no such provision in any of the orders to which you refer? A. The examining counsel has a short memory. In the order which I read, in the case of the Atlantic Mail Steamship Company against the New York Mail Steamship Company, is this clause: "Until the right and authority of the plaintiffs in this action to vote on said ten thousand and fifty shares of stock, if denied or prevented in said election of Directors, has been adjudicated and determined in this action." I hope the counsel has got his answer.

Q. Do you find, in Judge Barnard's order of March 10th, 1869, any provision which meets the case of an acquiescence by the Company in the right of the claimant to vote on the stock which he claimed? A. I find that in the complaints, original and supplementary. They deny his right *in toto*. That was enough.

Q. Do you find any provision of that kind in the order of Judge Barnard? A. You know what is in the order as well as I. I do not choose to repeat it to you.

Q. Do you not find just such a provision in the order from which you have this minute read, in the case of the Atlantic Mail Steamship Company? A. I have read the order, and you can judge for yourself.

Q. Is that the only way in which you can answer? A. That is the proper answer, I think.

Q. Do you find such a provision as that which you have read from the order in the Atlantic Mail Steamship Company case in any other of the orders of which you spoke as precedents; or, in other words, do you find in any of the orders of which you spoke as precedents any provision which absolutely enjoins the election until the right of the claimant is determined in the action, without any provision that the election might proceed, if his right to vote was acquiesced in? A. You have the orders, and can read them as well as I; if you desire me to read them over again, and the Committee desire it, I will. What is in them I shall not state, except by reading what is in them.

Q. With your attention called to the provisions referred to in the preceding question, will you still state that these orders are precedents for Judge Barnard's injunction in the Union Pacific case? A. I have answered that question already, and I decline to answer it again.

Q. Was not one of the orders of which you spoke as precedents an order obtained by your own firm in a suit with George Francis Train for plaintiff? A. The order has been read, and you know that

it was in a case in which George Francis Train was plaintiff, and in which Mr. Dudley Field, my partner, and son, was plaintiff's attorney.

Q. Was he the plaintiff's attorney, or the firm of Field & Shearman, of which you are a member? A. I am not a member of the firm of Field & Shearman, as you have been already informed some two or three times, I think; at that time the firm of Field & Shearman did not exist, if I remember correctly, and I will tell you in a moment; I have already explained once, and will do so again. There are four partners. The firm is a name—a firm of attorneys, consisting of Mr. Dudley Field, Mr. Sterling and Mr. Shearman. They alone have the right to sign the name. I am not a partner of the firm—that is to say, under the firm name of Field & Shearman; I am a partner with those three gentlemen, they being the attorneys, but at the time of which you speak Mr. Dudley Field was alone my partner.

Q. Were you a partner with your son in the business done under the name of Dudley Field at the time of the Train suit? A. Certainly, sir. Yes, sir.

Q. You have been asked in reference to what took place on the examination of Thomas C. Durant on March 29, 1869, before Judge Barnard. Do you not remember that on that occasion there was an altercation between Judge Barnard and the witness. A. I do not.

Q. Do you not also remember that certain things were then said by Judge Barnard, which the reporters were instructed not to enter in their minutes? A. I do not.

Q. Have you such recollection of what transpired on that occasion as to state that such was not the fact? A. My recollection, as I stated before, is general; I do not think that any such thing occurred.

Q. Assuming that a witness for Judge Barnard in this investigation has testified to that effect, are you able to contradict his testimony, from any knowledge or recollection that you now possess? A. That is a hypothetical question, which I decline to answer.

Q. I desire to test your confidence in the accuracy of your recollection. A. I shall not allow you to do that by saying I would or would not believe any certain person under oath.

Q. Will you then state positively of any knowledge or recollection which you have, either that there was not an altercation on that occasion between Judge Barnard and Dr. Durant, or that there was no direction given to the reporters not to take down what was said by Judge Barnard on that occasion? A. I will state nothing more in regard to it than I have—that I have no recollection of any such thing, and I do not believe it occurred; more than that I cannot say.

Q. Do the minutes of the stenographer, from which you testified on your direct examination, show any such altercation before Judge Barnard, or show anything said by Judge Barnard on March 29, 1869? A. I could not tell you without reading over the minutes again, and I do not think I am called upon to do it for your gratification.

Q. Will you be so good as to answer the question referring to the minutes? A. That is my answer. I shall not read the whole minutes

over for your gratification. If you point out any particular passage in them to which you desire to call my attention, I will look at it.

Q. I ask you to state whether the minutes, from which you testified on your direct examination, show any altercation between Judge Barnard and Dr. Durant on March 29th, 1869, or show that on that day Judge Barnard made any observation whatever? A. I answer again that I cannot tell you without reading the minutes over again, which I shall not do for your gratification.

Q. Will you do it for the purposes of this investigation? A. I will give you no further answer about it, always, of course, in deference to the Committee; if the Committee tell me to do it, I shall abide by it, but I will give you no further answer, unless these worthy gentlemen direct me to read it to you.

Q. Will you state how long it would take you to run your eye through the minutes, of what took place on that day, sufficiently to enable you to answer that question? A. No.

Q. State what your recollection is as to whether, on the 29th of March, 1869, any observation fell from Judge Barnard during the progress of Dr. Durant's examination? A. I have no recollection on the subject.

Q. Either way? A. Not the least, further than I have stated; I have no recollection of such a thing occurring; I think, if it had occurred, I should have remembered it.

Q. What I desire to know is, whether you have any recollection of anything said by Judge Barnard on that day? A. No further than I have stated.

Q. Have you stated that any observation fell from Judge Barnard on that day? A. I don't know that I have.

Q. Be so good, then, as to say whether any remark was made by Judge Barnard on March 29th, 1869, during the progress of Dr. Durant's examination? A. I am unable to answer.

Q. Were you present before Judge Barnard on April 8th, 1869, in any proceeding in the suit of James Fisk, Jr., *vs.* The Union Pacific Railroad Company? A. My minutes of subsequent examinations do not appear to be here, and I really cannot answer. If you will show me the minutes I will tell you. (After examination.) I have no doubt, if these are the stenographer's minutes—a paper is shown me which purports to be the stenographer's minutes, with a cover containing the name of a firm of stenographers—I have no reason to doubt, so far, that it is really a report, and if it be, it appears that I spoke on that occasion.

Q. Is not the firm of stenographers to which you refer the stenographers who took the report of the proceedings in that suit, from which you have testified? A. I think so.

Q. Is not the paper purporting to be their report, the paper from which you have testified, a press copy? A. I think it is.

Q. And is not the paper which you hold in your hand an original, from which has been taken apparently a press copy? A. I couldn't say that.

Q. You have no opinion on that subject? A. My impression is that

it is not; but it may have been taken, but it does not look to me as if it has; I would not like to say anything about it: if it is so, it is very slightly taken.

Q. Did not Judge Barnard on that day say this in substance, or use this language: "I know positively that not only no bond was offered to me on the 7th of August, 1868, but that no bond has ever been offered to me at any time whatever, even to this day," alluding to a bond which he stated Judge Blatchford had assumed to be filed for the removal of the Fisk suit to the Circuit Court of the United States?

A. I should infer from seeing it there that that was so; I have no particular recollection on that subject.

Q. You have stated, on your direct examination, that no proceedings were ever had on the part of the defendant in the suit of Fisk *vs.* The Union Pacific Railroad Company, to vacate an injunction you obtained; that the attitude of the defendants had been one of resistance throughout. Do you not know that the position taken by the defendants was, that the suit had become removed to the Circuit Court of the United States, and that the Supreme Court of the State had no further jurisdiction of it, and that all its orders were nugatory and void? A. You, I think, have misapprehended what I have said. I do not think I said they had never done so, but never except in two instances; one to modify the injunction of March 12th, and the other a motion in the Circuit Court to dissolve the injunction of March 17th. Other than those two applications, I don't remember of any application whatever being made to modify or resist. Now, as to the removal: the papers for the removal were served, as I understood, on the 31st of July. Previous to that time there was no pretence to any removal, and the contumacy, in my judgment, existed just as strong then, as ever. Afterwards there was a contest as to the removal, and most clearly the removal was not effected as to the whole case; that is to say, if we are not entirely wrong in our view of the law. It was never removed as to the *Credit Mobilier* of America, and as to a large number of the defendants until the last of March, 1869. During all that time the case was in the Supreme Court of the State, and its orders ought to have been obeyed, and I believe would have been obeyed but for the intention of the defendants to conceal these facts from the plaintiffs, to defy the Court for that purpose. I hope I have answered you.

Q. Now will you be so good as to tell me whether the position taken by the defendants throughout—I mean after their proceedings to remove—was not, that the suit thereby had become removed to the Circuit Court of the United States, and that the State Court had lost its jurisdiction? A. Will you tell me how I was to know what their position was?

Q. So far as you gathered it from all the proceedings to which you have testified on your direct examination subsequent to the proceedings to remove? A. I am surprised that the question should be asked me, when you know that Oliver Ames and Oakes Ames petitioned on the 30th March, 1869. The petitions of Oliver Ames and Oakes Ames were served, and their motion to be removed into the Circuit Court of

the United States, as to them was argued before Judge Clerke, and decided against them in May. What the defendants imagined or supposed I could not tell you without discriminating between the different counsel. One of the counsel, Mr. Stoughton, insisted that the whole case went over by the first petition. I do not think that all the other counsel concurred in that view; but there was this element in the case, that most clearly, if that were so, the case never went over until the petition was filed in the Supreme Court; and here is a copy of the affidavit of Charles Tracy, to the effect that it was filed in the Supreme Court on the 13th of March, 1869, and if that is true, nothing ever went there until the 13th of March, 1869.

Q. Is that true? A. I don't know.

Q. Do you not know? A. Have I not answered you, sir?

Q. In answer to Mr. Curtis, you have expressed your opinion of the entire propriety of all Judge Barnard's judicial action in the Union Pacific case. Does the opinion you have so expressed extend to all Judge Barnard's judicial action? A. I was asked about his action in the Union Pacific case, and I gave the answer. I decline to express any opinion upon any hypothetical question or case.

Q. Do you entertain that opinion in reference to all Judge Barnard's judicial action in litigations of which you yourself have known, or with which you have had personally to do? A. I have been examined as to Judge Barnard's action in matters that are now before this Committee; that is to say, in the Susquehanna litigation and the Pacific litigation, in which I do not think that Judge Barnard granted any order which he was not justified in granting, and which he ought not to have granted. If you mean to ask me my opinion as to Judge Barnard's general conduct as a Judge—which I do not know—I will put this as a question: Do you mean to ask me about his actions in matters not before this Committee?

Q. I ask you in reference to Judge Barnard's judicial action, or rather his judicial action in proceedings of which you yourself know, or with which you yourself had personally to do, meaning other than the Union Pacific and Susquehanna suits? A. I conceive that to ask the opinion of a lawyer, generally, upon the judicial conduct of any Judge, is improper. I shall not give my opinion of Judge Barnard or any other Judge, State or Federal, unless I am compelled. I hold it to be grossly improper. I am willing to answer any question about any fact within my knowledge, but to give my opinion of the fitness of persons who have been appointed or elected to office, to discharge their duties, is beyond my province, and I shall not answer unless compelled.

Q. Have you not, without hesitation or demur, expressed your opinion in respect to Judge Barnard's judicial action in the Union Pacific litigation? A. I have; because that is a matter in judgment here, and in regard to which I know—in regard to which I have knowledge and definite information.

Q. Was not the action on Judge Barnard's part, which you approve, in the Albany and Susquehanna litigation, and in the Union Pacific

litigation, invariably in your favor, or in favor of the interests which you represented? A. I don't think it was; but to give you particulars I should be obliged to make examination of the various proceedings. My impression is, that he refused some orders that were asked for, and that he failed to punish for violations of his order, or to follow up his order with the rigor which I think he might have done.

Q. Can you not, without examination, recall many orders granted by him, which were in favor of the interests you had in charge? A. O, yes.

Q. Both in the Albany and Susquehanna litigation and in the Union Pacific litigation? A. Yes, sir.

Q. Have there not been other litigations where you represented interests before Judge Barnard, in which his orders were not invariably or so frequently, or so invariably, in favor of your side? A. That question relates to other matters than those before the Committee, and I decline to give you an answer.

Q. You have stated your willingness to speak in respect to any specific transaction of which you had either personal knowledge, or in respect to which you had reliable information? A. In respect to matters before this Committee.

Q. Did you not yourself, at one time, take proceedings or some action looking towards the impeachment of Judge Barnard? A. I think that question very improper; and I decline to answer it, because I think it is improper.

Q. Did you prepare papers upon which to proceed for the impeachment of Judge Barnard in respect to his action as a Judge? A. I give you the same answer.

Q. What was your position in respect to the suit brought by Jacob Sharpe vs. The City of New York? A. I was counsel.

Q. On which side? A. For Mr. Sharpe.

Q. Did Mr. Sharpe obtain a judgment against the city? A. I think he did.

Q. For what amount? A. I can't tell you.

Q. For about what amount? A. I won't tell you; you can ascertain by the judgment; I don't remember.

Q. What is your best recollection as to the amount? A. I refuse to give you my recollection about it, because it is easy to get the things yourself. That is an exemplification of the illustration I gave you awhile ago.

Q. Was it as much as \$40,000? A. I decline to answer, unless you will show me the judgment.

Q. Have you no recollection without the assistance of the judgment? A. Not near enough to state with anything like precision.

Q. If I show you the judgment, will you examine it for the purpose of enabling yourself to answer the question? A. Certainly; that is to say, I will examine the judgment, but if you ask me after looking at the judgment what the amount is in it, I shall hand it back for you to examine yourself.

Q. With or without the aid of the judgment, will you inform the

Committee, according to your best recollection, what is the amount of the judgment? A. When the proper time comes to answer that question I shall answer it.

Q. Did you ever see any paper in that suit, or having any reference to that claim, in the office of the Comptroller in the city of New York, to which was appended what was, or what purported to be, the signature of Judge Barnard? A. I decline to answer any question on the subject.

Q. Upon what ground do you decline to answer? A. Because it has no relevancy to this whatever, that I know of.

Mr. PARSONS :

Is that a matter for Mr. Field or for the Committee to determine?

Mr. STRAHAN :

This is a question for the Committee to determine.

The WITNESS :

But it is a matter for the Committee to determine finally. The objection must first be made by me.

Mr. PARSONS :

I believe this is the first time I ever knew a witness to object to the relevancy of testimony.

Mr. STRAHAN :

There was no rule of the Committee precluding counsel on either side from interposing an objection, or from making any argument upon the question.

Mr. CURTIS :

I had supposed that I was not at liberty to make objections to questions in the same way that one is at liberty in every Court. I did not understand the rule to be confined to discussion merely, but that it was assigned as a reason why there should be such a rule, that the discussion would take up so much time.

Mr. PARSONS :

No objection whatever to testimony has come from our side. If an objection is to be entertained we shall not dissent, because we do not desire to offer any testimony that is not relevant. We wish to say this: that we seek to examine Mr. Field, subject to the direction of this Committee, in relation to Judge Barnard's course of judicial conduct since he became Judge of the Supreme Court; that is open for investigation, for the purpose of showing that he himself knows of conduct on the part of Judge Barnard for which he should be impeached.

Mr. STRAHAN :

Whenever a specific question is put, and an objection is made that it

is not relevant or material, the Committee will take it into consideration and decide it.

Mr. PRINCE :

We agree, Mr. Field, that the question shall be answered.

The WITNESS :

May I ask you upon what grounds am I to be asked if I rode or dined with him ?

Mr. PRINCE :

We do not know precisely where this is going to lead you. We are here as an Investigating Committee in regard to certain charges against the judiciary of New York. This is in regard to a paper in a suit which is said to be signed by Judge Barnard.

Mr. STRAHAN :

I am willing that the question should be answered, and that every question that can be answered shall be answered, because I want to make the investigation as thorough as possible. At the same time, if this is opening up a new matter, which is not contained in any of the specific charges which the Committee required to be made against Judge Barnard, then I say that, before we can investigate it under the rule of the Committee, and under any proper proceeding before such Committee, it should be made the subject of a charge. The charge should be made, and the evidence taken under that. If it is not that, and I do not know that it is, I can see no objection to its admission.

Mr. CURTIS :

I should, on this occasion, and on a great many other occasions, if I hadn't misunderstood my position, have claimed the right to argue objections. I cannot assist a tribunal of any sort at arriving at truth, or in shortening the time that is spent, without the opportunity to exercise the right of discussion.

Mr. STRAHAN :

If it is new matter we shall require it to be made the subject of a new charge, or require it to be stricken out.

Mr. TILDEN :

The Committee is not limited to the charges presented by the Bar Association. It is not trying the case at issue confined to that case.

Mr. CURTIS :

That is perfectly true in one direction, and yet, when you consider that you have before you an individual about whose official conduct and official position you are inquiring with the view of ascertaining whether there shall be any further proceedings in the Legislature in reference to him, it certainly would seem the mere dictate of ordinary

justice that the inquiry, so far as he is concerned, should be confined to the specific charges before you.

The WITNESS :

My objection to this is not to anything connected with the question itself, for I would just as leave answer it as not, but I will not be a party to any getting up of street gossip before a legislative committee.

Mr. TILDEN :

The Committee have decided unanimously to admit the question.

The WITNESS :

What is the question ?

Q. Did you ever see any paper in that suit, or having any reference to that claim, in the office of the Comptroller of the city of New York, to which was appended what was or what purported to be the signature of Judge Barnard? A. I have no recollection of even seeing any such paper. I hope you have got that.

Q. Were you ever in the Comptroller's office, so far as you remember, with reference to that claim or that suit? A. I have no recollection of ever having been.

Q. Do you remember your attention being called at any time to any paper signed, or purporting to be signed, by Judge Barnard, having any reference to that claim, or to that suit? A. I have no recollection of my attention being called to it by any person except a client, and I decline to tell what my client said.

Q. Who is the person of whom you speak as a client? A. Mr. Sharpe is my client.

Q. Is he the person to whom you refer? A. He is the person to whom I refer.

Q. Now, that you recall conversation with Mr. Sharpe, does it enable you to state whether you ever visited the Comptroller's office, and there saw what was, or what purported to be, the signature of Judge Barnard? A. I don't understand why you should repeat your question; nothing that I have said that I know is at all fitted to recall anything. I have no recollection whatever of ever having seen in the Comptroller's office any paper signed by Judge Barnard in this suit, and I have no recollection of ever going to the Comptroller's office in relation to it, or in connection with it whatever. If you want anything more, pray ask me.

Q. Either the suit or the claim? A. I have no recollection of ever having been there, either in relation to the suit or the claim.

Q. Did you ever go there to examine any paper? A. Any paper? why yes, I have often.

Q. Did you ever go there to examine any paper, which had reference to or connection with either the Sharpe claim, the Sharpe suit, or the Sharpe judgment? A. I don't remember any. It is possible that in preparation for trial there may have been some records or documents in the Comptroller's office that we wanted to look at, but I

can say, from my recollection, that the documents we got were from the Street Commissioner.

Q. Do you remember to have seen, in the Comptroller's office, a receipt signed by Judge Barnard, for which you subsequently looked, or caused somebody to look, and which you then learned not to be in the Comptroller's office? A. I decline to answer that question, because it is, I think, an offensive repetition of a question already put. I have already said that I do not remember having seen any papers in the Comptroller's office, with Judge Barnard's signature, in relation to this claim, and I do not mean to answer that question if repeated in any other form.

Mr. PARSONS :

I will make a statement, by way of a question, to Mr. Field.

The WITNESS :

The question now is, whether I saw a receipt. Does the Committee rule that that is competent, after I have twice said I do not remember seeing any paper at all in relation to this claim.

Mr. PRINCE :

It is very easy to answer no.

The WITNESS :

So it is, if there is to be an end to it. The next may be, did you see a letter.

Mr. PARSONS :

Perhaps it may be.

The WITNESS :

Shall I answer that question?

Mr. PRINCE :

It appears to me to be competent.

(Question repeated.) A. I don't remember any such transaction.

Mr. PARSONS :

Mr. Strahan, shall we state what we are endeavoring to establish? We are perfectly willing to do so.

Mr. STRAHAN :

No, you need not. The Committee have ruled that the question shall be asked.

Mr. PARSONS :

I now desire an answer to the question put to Mr. Field, the Committee being here to pass upon the question, which inquired whether he did not, at one time, take action looking toward the impeachment of Judge Barnard, and I desire Mr. Field to state the transaction, assum-

ing such action to have been taken by him, upon which was based his proceeding.

Mr. PRINCE:

It is a proper question.

The WITNESS:

I decline to answer it. You can take the judgment of the house. I will not submit to be asked about a matter which concerns a matter between me and my client.

Mr. PRINCE:

We have heard nothing that implied it was between yourself and client.

Mr. VAN COTT:

This question relates to the impeachment of Judge Barnard.

Mr. PRINCE:

Will you please divide your question?

Q. Did you not, at one time, take action toward the impeachment of Judge Barnard, either by the preparation of papers, or in some way?

Mr. CURTIS:

Will the Committee hear me on that question?

Mr. TILDEN:

The Committee does not desire to hear an argument on that question.

A. I do not think that I ever took any action in respect to Judge Barnard, except in consultation with my clients, and I decline to say what has passed between my clients and myself.

Mr. PRINCE:

I will put one question, right here. If you ever took any action looking to the impeachment of Judge Barnard, what was the special act of Judge Barnard on which such proceeding was to be based? A. That question is hypothetical, and I decline to answer it.

Mr. PRINCE:

That question is in precisely the form in which an investigating committee has to put its questions, to get at who are proper witnesses to call.

The WITNESS:

Before you ascertain whether any action is taken?

Mr. PRINCE:

Precisely. I will modify my question, however. Did you ever take any action looking toward the impeachment of Judge Barnard? A. For the reason I have already stated, I decline to answer.

Mr. TILDEN :

Do you mean to say that that was a communication made by your client to you, in the confidence of professional relations, that you took action in regard to the impeachment of the Judge? A. I do not say that I ever took any such action whatever. I say that, whatever transpired, whatever action I took at any time in relation to Judge Barnard, was in my consultations with my client. I don't remember that there ever was any action in relation to the Legislature, or in respect to anybody who could impeach, or was going to impeach. I mean to say that, according to my view, I could not answer the question at all, in relation to Judge Barnard and my relations with him, without disclosing the confidence of my clients. That is what I mean to say.

Mr. TILDEN :

Without discussing the question as to the limits of the privilege in regard to communications made by a client to his counsel which the law regards as confidential, do you mean to say that, in your opinion, action taken by you, or meditated by you, in regard to the impeachment of Judge Barnard, could come within that rule? A. I mean to say this, Mr. Tilden, that if my client consults me about a particular measure or thing, and makes a communication to me, and I give him advice upon that statement as to what he may do or may not do, is something that I am not to disclose. That is what I mean, and, to the best of my recollection, nothing in the purview of these questions goes beyond that. Now, I do not know whether I have made myself understood. (The witness here made a statement to the effect that he had had a difficulty with Judge Barnard in 1868, but that it was now all dead and buried.)

Mr. TIDDEN :

The Committee do not wish to inquire into any personal quarrel between Mr. Field and Judge Barnard, and I think the question should be answered.

The WITNESS :

Then ask the question. You can put it in the general way, and it would be very offensive. You ask me if there is any particular thing, but you can very well understand that, in a matter of this sort, where I was acting for certain clients, that my clients would come to me with storics, that I listened to them, and that I gave them advice, and so on. That I do not mean to give, unless compelled to. I do not mean to say what they told me, or what I told them.

Mr. PRINCE :

That is not asked you. A. I do not recall, at this moment—without saying that it is not so—any information outside, in reference to any impeachment matter.

Mr. PRINCE :

That is a sufficient answer.

Mr. TILDEN :

You must be aware that a great many things might be spoken of, between a counsel and client, that are not privileged.

The WITNESS :

You understand now perfectly well, excuse me, because it is a matter, really, of some consequence to the Committee, as well as to me and the rest. I do not want to be placed in a false position myself, nor do the Committee wish to be. Anybody here knows perfectly well that, in a large practice, a lawyer's clients come to him, day after day, repeating stories about matters. And we know perfectly well that there is great demoralization, and that there is scarcely a client who does not believe but that every Judge in the State can be bought, and they come to you with every sort of story. Are those things to be retailed? Not at all.

Mr. TILDEN :

We do not think Mr. Field would institute a proceeding of impeachment on rumor. A. I do not recall any act that I did besides advising my clients, either acting with them or for them. I have never been to the Legislature, that I know of, except about other matters.

Mr. TILDEN :

You never preferred articles or charges? A. I never heard of it if I did.

(At this stage of the proceedings, the witness engaged in conversation with Mr. Tilden, and passed over to that part of the room occupied by Judge Barnard's counsel, and spoke with them.)

Mr. PARSONS :

I desire to know, if the consultation of the witness with Judge Barnard's counsel is in accordance with any suggestion or permission of the Committee?

Mr. PRINCE :

It is not.

Mr. PARSONS :

We protest against it.

Mr. CURTIS :

Is it to be understood that Mr. Field, a gentleman of great experience at the Bar, may not confer with one of his professional brethren on a question on which it is supposed that the ultimate process of the Legislature shall be brought to bear? Do we stand in such a position as that?

Mr. PARSONS :

Did Mr. Curtis, in all his experience, ever see such a proceeding before?

Mr. ANDREWS :

I ask if the counsel for the prosecution have not conferred with their witnesses before bringing them here to testify ?

Mr. PRINCE :

They ought to, certainly.

Mr. PARSONS :

Is Mr. Andrews unable to see any difference between that proceeding and this ?

Mr. ANDREWS :

I never put a witness on the stand without finding out what he was going to testify to.

Mr. CURTIS :

I have always been allowed to make objections to questions, instead of a witness being permitted to be put through a course of inquiry for the amusement and gratification of motives, such as are apparent here. I think it would be a wise thing to change the whole course of this investigation, and confine the counsel to those things which are legitimately bearing upon the charges against the accused who is before you.

Mr. PARSONS :

Does Mr. Curtis mean to charge motives to us, outside of the line of the duty which has brought us here ?

Mr. PRINCE :

I do not think it is worth while to enter into a discussion on that point.

Mr. CURTIS :

If the gentleman wants an answer I will give him one.

Mr. PARSONS :

I asked the question for that purpose.

Mr. TILDEN :

Nothing has occurred which calls for these discussions. They are not respectful to the Committee, and are not useful in the progress of this investigation, and the Committee hopes there will be no more of them. The Committee will not entertain discussions of motives on either side between counsel. The Committee will judge for itself, and it is the judge of the line of policy to be adopted in continuing this investigation. It is not necessary that gentlemen should reflect upon any course of action which the Committee has chosen to adopt ; it must be governed by its own sense of duty, and must stand or fall upon the mode of its performance of it.

Mr. PARSONS:

We have not taken part in this discussion thus far; we now desire to insist that the testimony sought from Mr. Field is pertinent to the inquiry. If the Committee think we shall not prosecute the inquiry further, we have discharged our duty. The Committee have the responsibility of checking the investigation, and we have no complaint to make, and nothing further to say. We insist, however, to the Committee, that, if Mr. Field shall answer the questions that we have put to him, or that the Committee may put, testimony will be elicited which, not only in our own view, but also in the view of Judge Barnard's counsel, will very materially affect the report of the Committee.

Mr. TILDEN:

The Committee can only entertain the consideration of questions, and not arguments.

Mr. PRINCE:

I suggest, Mr. Field, that we go back to the question before us.

Q. Did you ever take any action looking to the impeachment of Judge Barnard? A. I do not think that I ever took any action in respect to Judge Barnard, in reference to any act of his, except in confidence with my client, and I do not believe that anything I ever did went beyond my client.

Q. Who is the person of whom you speak as your client? A. I do not think I am obliged to answer that question, am I?

Mr. TILDEN:

When was it? A. In 1868, as I have said; my difficulty with Judge Barnard was in 1868.

Mr. TILDEN:

What part of 1868? A. It was in the Spring or Summer of 1868, the Spring of 1868; it was in the Erie litigation, as you know perfectly well.

Mr. TILDEN:

It was in the first Erie litigation? A. Yes, sir; I never had anything to do at all with the first litigation, or scarcely. It was during the first Erie litigation, and I have now no recollection. I don't mean to say anything more definite than that; taxing my recollection now, I have no recollection that I ever did anything, in respect to any act of Judge Barnard, that could at all come within the purview of this question.

Q. Was James Fisk, Jr., the person of whom you speak as your client? A. He was one of my clients.

Q. Was he the person of whom you have just spoken as your client? A. As one of them.

Q. Do you refer, in your answer just preceding, where you spoke of clients, in consultation, that he was your client in what took place, in

reference to the subject inquired of? A. He, with others; he was one; I do not know that I could tell you all; there were a number of clients.

Q. Was this consultation of which you speak, with Mr. Fisk and others, on the subject of the impeachment of Judge Barnard, subsequent to the beginning of the first Erie litigation and prior to the Albany and Susquehanna and the Union Pacific litigations? A. Oh, yes.

Q. In the *interim*? A. I think it was during the first Erie litigation.

Q. At what stage of that litigation? A. Oh, well, I don't know that I can tell you, sir; that litigation began as early as March, I think.

Q. 1867? A. Oh, no—1868; in 1867 I was in Europe; it began as early, I think, as March; you must not understand that I mean to be accurate as to dates.

Q. I don't. A. It began, I think, as early as March, and was settled in July or the first of August; Mr. Gould was also a client; I would not undertake to say how many there were of my clients.

Q. Is it the litigation you refer to as being settled, or the attempt at impeachment? A. The litigation I speak of.

Q. That is what I supposed; when in this interval from March to July, 1868, was this consultation? A. I have not said there was any particular consultation; understand me, I do not intend to admit at all, that ever one word was said by me or to me by a client about Judge Barnard's impeachment; I said that whatever took place in relation to doing anything about Judge Barnard's acts, so far as I now recollect, was between ourselves.

Q. And when, between March and July, did that take place—whatever it was? A. Well, I couldn't tell you; it would be a guess.

Q. Was it during the session of the Legislature, or after the adjournment of the Legislature? A. Tell me when the Legislature adjourned, and I can tell you, probably.

Q. The middle of April, probably? A. Well, I should think that the litigation was pretty much over by the middle of April, but I am not sure; you must know that I was counsel; that all the attorney's business was done by other people, and I do not think that my partners were attorneys in the case, or in charge of the case, as attorneys; I think Eaton & Tailer were probably the attorneys.

Q. What is your best recollection of the time, whether it was towards the latter part of the litigation or towards the earlier part? A. I should be really obliged to make very much of a guess.

Adjourned until 7:30 P. M.

EVENING SESSION.

MARCH 27th, 1872.

WILLIAM F. HOWE, called by the Committee, sworn. Examined by Judge BARNARD.

Q. Are you a practising lawyer in this city? A. Yes, sir.

Q. Were you in 1868? A. Yes, sir.

Q. Do you recollect obtaining a *habeas corpus* in October, 1868, for Wenhold and others? A. Yes, sir.

Q. Where was that writ made returnable? A. At Chambers; there were seven prisoners, I think.

Q. Are you certain it was at Chambers? A. Yes, sir; it was made returnable at Chambers, at your house, I forget the name of the street.

Q. Twenty-three West 21st street? A. I forget the number.

Q. What time was the writ served that day? A. It was served in the afternoon.

Q. What time did they make a return, if they made any? A. They did not make a return up to seven o'clock; after that I had a consultation with Superintendent Kennedy and Mr. Acton, and Mr. Thomas Murphy, in the room; they demurred whether they should obey the writ at all; finally, at nine o'clock at night, to the best of my recollection, somewhere in the neighborhood of that time, they sent officers Coyle and Irving with the prisoners to your house, in whatever street it was.

Q. What was the charge against them, if any? A. The charge against them—there was no written charge; the charge upon which they were detained at police headquarters was suspicion of being about to register illegally.

Q. Do you know what time the registry closed that night? A. That night at 9 o'clock.

Q. Was that the last day for registering? A. Yes, sir.

Q. When they appeared at my house the registry was closed? A. Yes, sir.

Q. What, if any, return was made? A. No formal return was made, other than that by officer Irving, who was then a policeman, which was, that there was no charge against the men, and no authority upon which to detain them.

Q. Do you know whether Captain Irving saw Judge Barnard that evening or not? A. Yes, sir; he went into the house with me.

Q. Did Judge Barnard speak to him? A. Yes, sir.

Q. From where? A. From over the banisters.

Q. Where was Captain Irving? A. He was entirely inside, towards the foot of the staircase, standing with me.

Q. Do you recollect of Judge Barnard's asking whether there was any reason why the prisoners should be detained? A. Yes, sir.

Q. What did Captain Irving say? A. The Captain smiled, and said there was no reason.

Q. Whereupon Judge Barnard discharged them? A. Yes, sir.

Q. Do you recollect whether it was a pleasant night or a stormy night? A. It was a very stormy night.

Q. Do you recollect anything being said by the Judge as to the reason why they should not come into his house? A. Yes; you made some remark about the carpets being soiled.

Q. Was there any combination or conspiracy, or corrupt understanding, entered into between you and Judge Barnard in regard to the discharge of the men that night? A. I never spoke one word to Judge Barnard in respect to the case, except those words uttered in the presence of Captain Irving.

Q. Did you have any conversation with Superintendent Kennedy in regard to it? A. Yes; there was quite a conversation there at the police headquarters.

Q. What, if anything, did he say was the reason for detaining them so long? A. Inspector Walling, who was then Captain, had made the arrests, and I was sent for at an early part of the day, and asked what the charge was against these men; they stated that there was no specific charge entered; that they supposed that they were about to form a society for the purpose of illegal registration. I asked the Superintendent if he would send them down to Court; they said no; that they would be kept. I then sued out this writ, and I do not know whether I served it upon Captain Walling or the Superintendent; I know they hesitated to obey it, and did not obey it.

Q. I will ask you a question which may be somewhat leading. Do you recollect Mr. Kennedy stating that he could take them up now, for it was too late for them to do any injury? A. He stated somewhat to that effect; that it was too late, and the prisoners could not do any injury.

Q. Then it was after 9 o'clock. A. Yes, sir.

Q. Do you remember now that it was nearer 11 o'clock when they came to my house? A. It was very late, because I remember when we returned that it was very stormy, and the officers, and myself, and the prisoners went into Jerry Thomas's, close to this vicinity, to get something to drink. Yes, it must have been after 9 o'clock; I can give you my reasons. They sent round to the Fourteenth Precinct, to get an escort of officers to see the prisoners into the stage.

By Mr. PARSONS:

Q. Did not these gentlemen with whom you went into this place and took a drink belong to the gang of Reddy the Blacksmith? A. I did not know one of the prisoners; I do not know that I ever saw them before that night or since, not any one of them.

Q. Are you able to inform this Committee whether or not they did not belong to the gang of Reddy the Blacksmith? A. I do not know Reddy the Blacksmith's gang. I know the illustrious individual himself.

Q. Do you remember that, subsequently, the Committee appointed by Congress to investigate the frauds at the Fall election of 1868 suc-

ceeded in showing that these men had been parties to an arrangement to perpetrate frauds upon the registry, and that a book in the shape of a poll list, or something of that kind, was discovered by the Committee, in which these men had entered fraudulently a large number of names, with the view that they should vote at that election? A. No, sir; I know there was a book seized at the time of this arrest by Inspector Walling.

Q. And was not that book a book in which they had entered the names of a large number of people, with a view that they should be permitted fraudulently to vote at the election? A. I cannot say; I know there was a book found with these parties at the time of their arrest.

Q. Do you mean to state before this Committee, that there was no charge against these men when they were detained at police headquarters? A. No written charge.

Q. What do you mean? Do you mean a charge before a magistrate or a warrant? A. A complaint and affidavit made by any person.

Q. Is there any legal necessity for an affidavit and warrant from the magistrate, for the arrest and detention of men who are taken in the actual commission of a crime? A. No, sir; not in case of a felony.

Q. Is all you mean to state in that regard, that there was no written verified complaint against these men? A. No warrant against these men, or any written complaint that I saw or heard of.

Q. Did you examine the books at police headquarters, to ascertain what the charge was against them? A. I did, that night.

Q. Did you find that they had been arrested on the charge of being engaged in frauds upon the registry? A. It says, "suspicion of illegal registry."

Q. Was the word "suspicion" there? A. I do not know; that is my impression.

Q. Why did you state that it was there if you did not know? A. Because that was the information given to me by the officers and prisoners.

Q. Why did you state that it was written upon the book at police headquarters? A. I did not see the book at the police headquarters.

Q. Have you not stated that you did find that was the charge upon the book? A. You asked if I had made an examination; examined into the thing; we are not permitted to see the book at police headquarters; the officer refers to the book, and tells you from that.

Q. Was not the statement upon the book at police headquarters, and the information then given to you, that these men had been engaged in the perpetration of frauds upon the registry? A. They said that the charge against them was that they were arrested upon suspicion—so I understood it—of forming a company to make illegal registration, and that in the execution of that purpose they had found a book.

Q. Was not the charge that they had been found in the actual commission of the offense? A. Not stated so to me; the book would show beyond all doubt.

Q. Is that all you can say in reference to it—giving a reference to the book? A. That is all I know; the book must be there; they enter every charge.

Q. Do you mean to state what the book will show as the charge against these men? A. No, sir.

Q. You have no knowledge yourself? A. Only from the statement of the officers.

Q. And was not that statement, that they had been arrested for the violation of the registry law? A. Yes, sir.

Q. That was a criminal offense? A. Yes, sir.

Q. And these men had been arrested for the perpetration of a criminal offense, and on a charge that they had actually committed it at the time of their arrest? A. They stated they had no testimony against them at the time, and there was a debate whether they should be sent up or not.

Q. Did any one make that statement to you, or in your hearing? A. Yes; it was made in the hearing of several.

Q. Did any one make that statement to you, or in your hearing? A. Yes; several prisoners stated that there had been no complaint against them, and they thought it a great hardship that they should be locked up to prevent their registering.

Q. The prisoners? A. Yes.

Q. Did any officer, or person connected with the police headquarters, make any statement to you to that effect? A. I do not remember that they did; I remember asking particularly Inspector Walling.

Q. When you have testified in reference to the fact of a charge against these men, or the want of a charge, have you relied upon the information which they themselves gave you? A. No, sir; I asked the police, I cannot say which one—in all probability Inspector Walling—whether they had any complaint or affidavit.

Q. Have you ever seen the testimony of Inspector Walling before the Congressional Committee? A. I have not.

Q. Did not Inspector Walling inform you that he had arrested these men because he had found them engaged in the actual offense of attempting a fraud upon the registry law? A. I do not know; he may have.

Q. Is that the best answer you can give? A. Yes, sir.

Q. When did you first see these prisoners? A. It was in the after part of the day.

Q. How late? A. I guess 3 or 4 o'clock.

Q. Not later? A. I do not know; it may have been later.

Q. How late may it have been? A. As late as 5 o'clock.

Q. Did you obtain from Judge Barnard the allowance of the writ? A. No; I think my partner obtained it.

Q. Was there a petition for the writ? A. Yes, sir.

Q. Did you obtain that? A. I do not remember; that I do not know; the five names, or the seven names, were included in one writ; I remember that.

Q. Did you obtain that writ? A. I think my partner obtained it.

Q. Did he obtain it upon information that you received from these men when you first saw them? A. No, sir; some one called at the office and stated that some prisoners had been arrested upon some suspicion of illegal registry, and were detained at police headquarters.

Q. Have you any objection to answer the question without stating other matters. Did you obtain the writ upon the information obtained from these parties on the occasion of your first seeing them? A. No, sir.

Q. Have you any knowledge who did obtain the writ? A. It was obtained either by myself in person or my partner; no one else.

Q. Did the men sign the petition? A. No, sir; most certainly not. I had not seen them at the time the writ was obtained.

Q. Do you know where Judge Barnard was when the writ was allowed by him? A. In the City Hall, somewhere.

Q. Do you know? A. I do not.

Q. Have you any recollection on the subject? A. That is my best recollection.

Q. Have you any? A. I cannot tell you whether I obtained the writ, or my partner.

Q. Have you any recollection on the subject? That is my best recollection.

Q. Have you any recollection on the subject? A. That is all I have.

Q. Whether that amounts to anything we are unable to form an opinion. Have you any recollection on the subject whether you obtained the allowance of the writ? A. No, sir; for I do not know whether I obtained it or my partner.

Q. Have you no recollection? A. No, sir; not of obtaining it.

Q. You have no recollection then where it was obtained? A. No, sir.

Q. Did you see the writ? A. That I do not know.

Q. Look, for a moment, and see whether you did not serve the writ? A. I was there in person about this matter nearly the whole afternoon.

Q. Did you not personally serve the writ? A. I cannot say whether I employed a man, or any one else served it. Allow me to give you my impression.

Q. No; if you have any recollection I would like to have it? A. To the best of my belief, I served it in person.

Q. You served it upon Captain Irving? A. No; I think I served it upon Captain Walling.

Q. Think, for a moment, whether you did not serve it upon Captain Irving? A. No; I am pretty sure I served it upon Inspector Walling.

Q. Will you state positively you did serve it upon Captain Irving? A. No, sir.

Q. If Captain Irving stated that you did serve it upon him, would you contradict that? A. No, sir; but I still think that it was upon Inspector Walling, because it was he that made the arrest.

Q. Have you any recollection what time it was when you served the writ? A. It was in the afternoon.

Q. Do you recollect that it was while Captain Irving and some one associated with him were upon night duty at police headquarters. A. No; I do not know.

Q. Will you state that it was not so? A. No, sir.

Q. Do you remember that, immediately upon the service of the writ upon Captain Irving, he and officer Coyle went to Judge Barnard's house? A. We went there; I do not know that it was immediately; we went there that night, Coyle, Irving, and myself.

Q. Will you state that it was not immediately upon the service of the writ? A. Oh, it was some long time afterwards, because they refused to obey the writ.

Q. I am coming to that presently; but I desire to know whether you did not, immediately upon the service of the writ, proceed with Captain Irving to Judge Barnard's house, taking the prisoners? A. Most certainly not, taking the prisoners; I will give you my reasons.

Q. I don't want them. You have alluded to a conversation at which were present Mr. Acton, Mr. Kennedy, and Mr. Thomas Murphy. Do you feel quite confident you are accurate in your recollection of any such conversation? A. I was not present at the conversation, which was in the private room, which is now the Inspectors' room; Mr. Superintendent Kennedy went into the room. This is one of the reasons that I was about to give for showing that the writ was not obeyed immediately. Mr. Superintendent Kennedy then came out, and I said that I wanted that writ obeyed immediately; they did not obey it; they said they would consider about it, and went back into the room.

Q. Will you be perfectly confident that such a conversation took place with Superintendent Kennedy? A. Yes, sir.

Q. Do you mean after he had been telegraphed for? A. They came there; it must have been near seven o'clock, to the best of my recollection?

Q. Did not Mr. Acton and Mr. Kennedy come to police headquarters in a carriage, reaching there upon the return of the officers from Judge Barnard's house, after the prisoners were discharged? A. I did not go back to police headquarters after they were discharged.

Q. Will you state to the Committee that you saw Mr. Kennedy and Mr. Acton prior to the discharge of the prisoners? A. Yes, sir.

Q. Do you mean to state that positively? A. Yes, sir; they were in the private room, which is now the Inspector's room; no, it was then the Inspector's room.

Q. Was that prior to the time of serving the writ? A. No; Superintendent Kennedy was not there when the writ was served.

Q. How late in the evening will you state that you saw Mr. Kennedy and Mr. Acton? A. I cannot tell; it was after seven o'clock, I think.

Q. Will you state it was before nine o'clock? A. No, sir; I would not do that.

Q. Will you state it was before half past nine o'clock? A. No, sir; I cannot do that.

Q. About what hour was it you left police headquarters, to go to Judge Barnard's house? A. I think it was between nine and ten o'clock.

Q. About half past nine, was it not? A. I should think so; I cannot tell you the precise moment; it is so long since that my memory is not very accurate as to the order of proceeding that occurred there, or indeed, what was said; I cannot tell accurately.

Q. How did you and these men with Capt. Irving, and officer Coyle, go to Judge Barnard's house? A. In an ordinary stage.

Q. Did the men remain on the side-walk? A. They did not go into the house.

Q. Did any one enter the house except Capt. Irving and yourself? A. Not that I remember.

Q. Did you go into the back parlor? A. I think we did.

Q. Did you go up stairs? A. No, sir.

Q. Do you remember what it was you wrote upon the writ of *habeas corpus*? A. No, sir; probably, I would write out the order for the discharge.

Q. Did you write out the order for the discharge? A. I do not know; the writ will show.

Q. Do you remember writing something on the writ? A. I think I do.

Q. Did Judge Barnard write anything on the writ except to sign his name to something written by yourself? A. Not that I remember.

Q. What did you do with the writ, after you had written upon it and Judge Barnard signed it? A. I handed it to Irving, I think.

Q. Did you not give it to the servant girl? A. No, sir.

Q. Do you remember what you did do with it? A. No, sir; in the ordinary course the officer would have it as his warrant for the discharge of the prisoners.

Q. Did Judge Barnard come down stairs? A. Judge Barnard looked over the stairs.

Q. Did he come down stairs? A. I did not see him down stairs—not in the hall.

Q. Did Capt. Irving leave the back parlor during the time that you and he were in the house, except to pass from the back parlor to the door? A. I do not think he did.

Q. Can you, from recollection, state how the writ got to Judge Barnard? A. The writ, I believe, was sent up stairs.

Q. I ask if you recollect how it went to Judge Barnard? A. I stated what I believe.

Q. I ask your recollection? A. My belief, at this moment, is my recollection.

Q. Please put it in that form, if you state that you do recollect?
A. I have not an accurate recollection.

Q. I do not wish an accurate recollection. A. I cannot tell you.

Q. Unless you have a recollection I do not desire it. A. I have not a decided recollection about it.

Q. Did you see Judge Barnard on this occasion? A. On the occasion of the discharge—yes, sir.

Q. Are you sure? A. Yes, positive.

Q. Where did you stand when you saw him? A. I was below, with Irving.

Q. Below where? A. In the hall way.

Q. Do you mean to state positively that Judge Barnard came to the banisters and looked over the banisters, so that you saw him, while you stood in the hall-way? A. Yes, sir.

Q. Was not Judge Barnard sick in bed, and did not the servant girl inform you so when you rang at the door? A. If he was sick he recovered very quickly.

Q. Will you state positively that you saw Judge Barnard that evening? A. Yes, sir; most positively.

Q. And had any conversation with him? A. Yes, sir; most surely I had a conversation; that is most certain.

Q. Do you recollect the circumstance now that no written return was made to the *habeas corpus*? A. There was no return made but that which Irving directed me to make—whether in the room, or in the hall-way, I do not remember. The return that Irving made in person was—

Q. Are you speaking of a written or verbal return? A. Irving stated this verbally to the Judge.

Q. What I ask is, do you recall the circumstance that no written return was made to the writ? A. No, sir, there was not; if there was I would have traversed it; that is my best recollection that there was no written return. I would not swear there was not.

Q. Can you explain to the committee why you wrote on the endorsement upon the writ, for Judge Barnard to sign, "No offence being charged in the annexed return," if there was no written return? A. I am not aware that I so wrote. The writ will show it. If you produce the writ it will assist my recollection.

Q. Can you recollect that you did, in alluding to the return, in your endorsement upon the writ, speak of it as "the annexed return?" A. No, sir.

Q. If you did speak of it in that way, did you allude to it correctly, or incorrectly? A. I cannot tell; I do not know that there was a written return.

Q. Have you not stated that there was not? A. I said to the best of my belief there was not; that Irving was the man that made the return.

Q. Do you now mean to state that Captain Irving, on that evening,

said to Judge Barnard anything to the effect that there was no charge against these men? A. Yes, sir; certainly he did.

Q. There was a charge against them, was there not? A. I say there was no charge against them, when the writ was returned.

Q. Was there not a charge against them, in the sense in which there is a charge against every prisoner arrested, who is found in the actual commission of a crime? A. I cannot reason about it; I know that when a man is arrested and taken to the police station for a misdemeanor, without a complaint, there is no charge against him.

Q. Is what you mean to state this, that what Captain Irving said was that there was no written verified charge against the men. A. He did not say anything about "written" or "verified;" he said there was no charge upon which to detain these men, and said more, (Captain Irving himself will testify if his recollection serves him,) that the men had been arrested upon this charge of illegal registration, and that they were kept there, and they had no evidence against them, something to that effect. I cannot be accurate, or pretend to give the words that he said.

Q. Do you mean to state that is the fair import of what Captain Irving said on that occasion to Judge Barnard? A. Yes, sir; that is the fair import; his words I cannot give you, or my words.

Q. And if Captain Irving has stated that he did not see Judge Barnard on that occasion, has he stated what is not true? A. He has made a very decided mistake—a very decided mistake.

Q. He has stated what is not true, has he not? A. I would not like to say that.

Q. Why would you not like to say that? A. Because Captain Irving is a very conscientious officer.

Q. Is that the only reason? A. My own positive assurance of the fact that he did see Judge Barnard with myself; just as much as I remember seeing you to-night, if I should be interrogated about it two years hence; but I could not tell what questions you asked me, or what I said to you; neither would I pretend to give the remarks of Kennedy, or any one else, or the exact times.

Q. Was that the first occasion when you saw Judge Barnard that day? A. The discharge of the prisoners; no, sir. That is one reason why I know he was not sick.

Q. When, before that, had you seen Judge Barnard? A. I saw him, and notified him that I had served the writ, and that they had refused to obey it.

Q. State when, before that, you had seen Judge Barnard. A. At his house.

Q. When? A. It was somewhere after the writ had been served; I think in the interval between 5 and 7 o'clock.

Q. Have you not just said that you could not testify that you had seen Mr. Kennedy at all until half-past 9 o'clock? A. I have.

Q. How then could you tell Judge Barnard, prior to that time, that Mr. Kennedy declined to obey the writ? A. Although I had not seen Kennedy, I had asked the officers if they were going to take the

prisoners to the Judge's house, in compliance with the terms of the writ ; they stated that they did not know whether the Superintendent could be there or not ; I distinctly recollect that I pressed upon them that they should obey the writ, and then I went to Judge Barnard's house at the time that the writ was returnable—I think 7 o'clock, or in that neighbourhood.

Q. Was it not returnable "forthwith"? A. No; there was a time mentioned in the writ, I am positive; I went to the Judge's house and waited.

Q. State when it was that you went to the Judge's house? A. It was the time called for by the writ, and I waited there.

Q. State what took place between you and Judge Barnard upon that occasion? A. I stated that I had served the writ, and I was waiting the return of it; I waited more than half an hour, and there was no return made, and no one came; so then I had a coach and returned to the police headquarters.

Q. I ask you to state what took place between Judge Barnard and yourself. A. I stated to you that I had served the writ, commanding a return of these prisoners, and Judge Barnard said, "Wait and see if the writ will be obeyed." I waited.

Q. Did you not start a few minutes since to say that you had told Judge Barnard they did not intend to obey the writ? A. No, sir; I was waiting to see if they would; I was expecting they would come; I was waiting to see if they would not bring the prisoners there; I waited longer than the time, and then returned to police headquarters, and then it was that I saw the Superintendent.

Q. Did you arrange with Judge Barnard, on that occasion, that you might bring the men at a later hour to his house? A. No, sir.

Q. Nothing of that kind? A. Nothing of that kind was said by Judge Barnard or by me.

Q. Do you know that at that election Judge Barnard was running for Judge of the Supreme Court? A. I do not know that of my own recollection, but I believe it was so.

By Mr. CURTIS :

Q. Did you know any of these men personally? A. Not one of them; I would not know them again.

Q. Did they appear to you to be honest laboring men, or roughs, or rowdies? A. I did not see anything of the rough element about them particularly, except that they were dirty and dilapidated, and their boots were very muddy.

By Mr. PARSONS :

Q. Do you remember that Judge Barnard declined to let them come into his house, afraid that his spoons would be stolen? A. I do not remember his saying that; he might have used the expression.

By Mr. CURTIS :

Q. My object was to know if you could classify them as belonging

to any particular description? A. Not anything particular; they were ordinary men; all sober, and looked like ordinary mechanics.

DAVID D. FIELD: Cross-examination resumed by Mr. PARSONS:

Q. You have spoken of active proceedings on your part for Mr. Fisk in the Union Pacific Company's suit during the months of August until December, 1868, when terminated the hearing of the motion before Judge Barnard for the removal of the cause; was not that suit of James Fisk, Jr., settled by Mr. Fisk, he receiving \$50,000, through Judge Fullerton, in the months of July or August, 1868? A. Never, to my knowledge or information; I never heard a word on the subject until I saw Mr. Fullerton's testimony in a morning paper, last week; in the latter part of July, or early in August, 1868, Mr. Shearman mentioned to me one morning that Mr. Fullerton had sent him word, or told him, that he was authorized to offer \$50,000 in settlement of the suit; I immediately sent to Mr. Fisk; he came to see me, and said that he would not take it; I requested Mr. Shearman to return that answer to Mr. Fullerton; I believe he did, and from that day until I saw the statement in the morning paper, I never heard any word on the subject; Mr. Fisk never breathed to me a syllable—never spoke of any such thing pending, and never gave me instructions to stop or pause one single day.

Q. On your direct examination, you have expressed your belief on several subjects; have you any belief on this subject? A. Upon what subject?

Q. The assertion of the settlement of this suit by the payment through Judge Fullerton to Mr. Fisk of \$50,000 in money, in July or August, 1868.

Mr. CURTIS:

Does not that call upon the witness to say whether he would believe Judge Fullerton?

Mr. PARSONS:

If the objection comes from Judge Barnard's counsel, we will withdraw the question.

Mr. TILDEN:

I think it is a rather broad question without the objection, that is as to his mere naked belief; if you ask the witness to state any fact which would be a ground of belief for others, that is a different thing.

Mr. PARSONS:

We will not press for an answer to the question, but will accept Mr. Tilden's suggestion, and ask Mr. Field if he knows of any circumstances which justify any such belief?

Mr. FIELD:

That I think is objectionable to very much the same extent, because

it asks me to express an opinion about the affidavit of a gentleman whom I regard; I can give you a circumstance which is against any such inference, that Mr. Fisk told me afterwards that Mr. Samuel L. M. Barlow had offered him \$68,000, I think, to settle the suit; I think it was \$68,000, although I would not be sure as to the exact amount, and he refused; he consulted me on the subject; the thing is absolutely inexplicable to me; I cannot understand it at all; and there must be some very great mistake on the subject, for most surely neither to me, nor so far as I know, to any of my partners, nor to anybody concerned in the case, was there any intimation that the suit had been settled; on the contrary, I had been pushing it on in the firm belief that the suit had a substantial foundation, and could be carried to its termination.

By Mr. TILDEN:

Q. Can you fix the time mentioned in your former answer, when you spoke with Mr. Fisk, and he consulted you in regard to the settlement?

A. I can only remember this circumstance, that Mr. Fullerton told Mr. Shearman, or Mr. Shearman informed me that Mr. Fullerton told him, that he wanted an answer that day, because he was going out of town for the Summer; and I think, from my general recollection, that it must have been the latter part of July.

By Mr. PARSONS:

Q. And that subsequent to the attempt to settle, upon its termination, Mr. Fullerton went out of town? A. That I do not know; that is the message that came—that he wanted to go out of town.

Q. Do you not recollect that on one or two occasions subsequent to that, on behalf of Charles Tuttle and other persons, before Judge Barnard, it was necessary to send to Newburg for Mr. Fullerton? A. I do not remember.

Q. Have you any recollection on the subject? A. None, whatever.

By Mr. TILDEN:

Q. Perhaps you may find in your mind some association with reference to the state in which this litigation was, at the time of this conversation; think a moment, and see? A. Whether it was before the petition for the removal of the case into the United States Circuit Court was served, I cannot say; that was on July 30th; it may have been a day or two before or after; you know that a stay of proceedings was granted very soon upon that, which tied up our hands in respect to almost all proceedings until the argument and decision of the motion.

Q. There was a stay of proceedings about that time? A. It was on that very order.

By Mr. PARSONS:

Q. Was not the stay without prejudice to obtain an examination of Directors? A. Not at all; the stay was absolute, but we got it modi-

fied so far as to allow us to take evidence in regard to the removal, we taking the ground that the attempt to remove was a sham and colorable, and that there was no foundation for the statement in the petition, and we wanted to prove that it was not applied for by the company or the Directors whose names Mr. Tracy had signed; that they had not authorized the statement in the petition; I think the stay was never modified in respect to any other portion until the final decision of Judge Barnard, in March, 1869.

By Mr. CURTIS:

Q. If we assume that Mr. Bushnell, or any other officer of the company, furnished Mr. Fullerton with \$50,000 to be used in the settlement of the case, or in any way stopping the prosecution of that case, is there any fact within your knowledge to indicate to your mind what Mr. Fullerton did with the money? A. None whatever.

Q. Have you any means of forming an opinion, supposing that he had such money in his hands for such purpose, what he did with it? A. None, except from his own testimony. May I add that what makes the thing surprising to me and entirely impossible to be understood by me is, that we should have been in the litigation against the defendants, and that none of them ever communicated to me or to my firm, my partners—Mr. Field or Mr. Shearman—that there was any such thing; that the debate should have gone on regularly, as if both parties were urgent in carrying the thing through; and my impression is that Mr. Fullerton argued the motion for removal, among others. Is not that so?

• Mr. PARSONS:

His name appears to the brief.

WITNESS:

Let me see how it is. For instance, I observe in the order, which is dated on March 10th, a recital, and that papers were read so and so, and after hearing Charles Tracy, William W. McFarland, and William Fullerton, Esq., counsel for petitioners, &c. Also, in Judge Barnard's opinion, it is stated that Charles Tracy and Ex-Judge Fullerton appeared for the motion and Mr. Field opposed it. I do not mean by this to intimate any distrust in anything that Mr. Fullerton has said; I can only say that it is incomprehensible—I do not understand it. Persons were even arrested for not making affidavits after this, upon an attachment. And the examination of Mr. Durant before Judge Barnard took place on the 20th, 22d, 23d, and 29th of March, 1869. There is not a syllable breathed anywhere of any arrangement for even a temporary delay. Then, again, I find Mr. Fullerton's affidavit sworn to on April 16th, 1869, in which he says he was counsel for petitioners on the application mentioned in the foregoing affidavit of Charles Tracy, &c.

By Mr. PARSONS (resuming the examination from the point where it was broken off in the afternoon):

Q. Have you not seen affidavits or other written papers, one or more, charging Judge Barnard with malconduct in office? A. I do not now remember any, but if you can refresh my recollection in regard to it, I will answer more specifically.

Q. Have not such papers, one or more, been prepared by you, or under your direction? A. If you mean to ask what you asked before the adjournment, that I should state whether I have received from my clients in communication, what I have answered them, or what I have done in their presence, I decline to answer; beyond that I will answer your question with great pleasure.

Q. What I ask is whether affidavits, one or more, were not prepared by you, or under your direction, charging Judge Barnard with malconduct in office. A. Beyond what I have said in regard to the communications between my clients and myself, I have no recollection of any papers being prepared in relation to any of Judge Barnard's acts. What took place in confidence between them and me, I decline to tell you.

Q. Will you decline to state whether or not affidavits were not prepared by you or under your direction, charging Judge Barnard with malconduct in office? A. I do, in the way in which I have already done; I do it on the ground that when my client comes to me and consults me, and I take notes of what he tells me, and I give him advice, that all that is said and written in that interview is confidential, and that I am not only not obliged to state it, but I am not at liberty to state it, without violating my professional duty.

Q. Name the persons to whom you now refer as your clients? A. I have already done so, and there is no occasion to repeat it.

Q. I desire to have it appear in this connection that you allude to Fisk and Gould; are they the parties to whom you now refer as your clients, Fisk and Gould, and others connected with them? A. I have already stated who my clients were, or some of them; and I think there is no occasion to put the question to me again.

Q. Do you refer to any other persons than these as being your clients? A. I refer to no persons but my clients; and who my clients were I have already stated, I think, and I see no occasion to repeat either the question or the answer.

Q. Will you be so good as to say whether you refer to any other persons except Gould and Fisk and those who, in that connection, you have stated to be your clients? A. I have already answered the question so far as I think it is proper that the question should be asked me.

Mr. TILDEN:

The witness did not refer to Gould as one of his clients. A. I did mention him afterwards.

Mr. PARSONS:

Q. Are they the only persons from whom you have received information on that subject? A. That is a repetition, in another form, of the same question, and I give the same reply.

By Mr. PARSONS :

Q. I ask for an answer to that question ?

By Mr. TILDEN :

That is, you say, you had no information not derived from the persons you have mentioned as your clients, before the adjournment ? A. No information asked in this connection ; I do not mean to say that I have not any information at all. I have heard ever so many things said by Mr. Parsons and others.

Q. Anything of which we are speaking ? A. I do not recollect of receiving any information except from my clients or my associate counsel ; I will not affirm that I did not, but I have no recollection of any.

By Mr. PARSONS :

Q. Did the persons of whom you speak as your clients communicate to you any information about any transaction or proceedings having any reference to Sharpe's claim, suit or judgment ? A. That I decline to answer, for the same reason, that it would be disclosing what they told me.

Q. Did you not obtain information in respect to proceedings of Judge Barnard, in connection with that transaction (I mean the Sharpe claim, suit or judgment), from persons or from sources other than that to which you have referred—I mean Messrs. Fisk, Gould and the other persons of whom, in that connection, you spoke as your clients ? A. I do not remember receiving any information from any other persons except from my clients and associates.

Q. In making that answer, do you allude to any other persons as your clients than those you referred to in your previous answer ? A. None, except those I have referred to in the course of my examination. You have already asked me in regard to Mr. Sharpe's being a client. He was a client.

Q. Was Mr. Sharpe a client in respect to the preparation of any affidavit or other papers of the character about which you have been asked ? A. I have not said there were any such papers.

Q. And I have not asked you whether there were any such. A. Then the answer is purely hypothetical.

Q. I ask you to give you an opportunity of answering in the negative ? A. I do not want such an opportunity.

Q. Will you please to answer whether Mr. Sharpe was your client in any such proceedings ? A. The question supposes there was such a proceeding, of which there is no proof, and I decline to answer any hypothetical question.

Q. All we can do is to apply to the Committee ?

Mr. TILDEN :

What is the question ?

Mr. PARSONS :

Whether Mr. Sharpe was the client of Mr. Field in any proceedings looking to the preparation of charges against Judge Barnard ?

Mr. CURTIS:

Is not that asking for a fact?

Mr. FIELD:

It is an indirect way of putting a question already refused to be answered, with the approbation of the Committee.

Mr. PARSONS:

We may as well learn at this stage whether the whole inquiry is to be brought to a dead lock by the indefinite statement of Mr. Field, that every person who had any relation to these proceedings was his client.

By Mr. TILDEN:

Q. You mentioned four persons who were clients of yours, Fisk, Belden, Sharpe, and Mr. Gould. Are these the clients to whom you alluded? A. They are some of them. How am I to know? There were proceedings taken against eight or ten Directors of the Company; I believe every one of them came to me and I acted for them; I cannot enumerate their names now without the list.

(At this point Mr. Field said that he wished to make some explanation which should not be taken down on the minutes. Counsel for the Bar Association directed their stenographer to take a note of whatever was said.)

Mr. CURTIS then suggested to Mr. Field that it was better for him not to make any statements except what he wished to be entered on the record as evidence.

Mr. TILDEN thought it might facilitate to allow some conversation that would not be taken down on the minutes.

Mr. PARSONS said the difficulty was that this conversation was intended to bring about a determination on the part of the Committee which would excuse the witness answering, and it was desirable to have it all appear upon the record.)

Mr. TILDEN:

Then he is not obliged to hold any conversation; of course you have a right to take it all down.

Mr. CURTIS:

If we were permitted to discuss some things it might help to elucidate the matter, but under the ruling of the Committee there is no room for objection or discussion.

Mr. TILDEN:

If a question should arise which the Committee deem important to investigate, no doubt they would make an exception to their rule of action, so as to authorize a discussion of that particular question. The reason of the general rule which the Committee has adopted is this—to avoid the multiplicity of objections and extended discussion on each

and every question, which would prolong this investigation so that it would be impossible to get through. The Committee therefore determined not to entertain any discussion as to the admissibility of evidence unless there should a special exception arise, when they might request it.

By Mr. PARSONS :

Q. Have you now in your possession affidavits or other papers, one or more, charging Judge Barnard with misconduct in office? A. Whatever papers I have in respect to Judge Barnard's action, within the purview of the question, are papers to which I think my clients have a claim, and nobody else. They have not been made public, to my recollection, anywhere or to anybody, and I therefore decline to give you any information about them.

Q. Are such affidavits or papers, one or more, entitled in any suit or other proceeding to which are parties the clients of whom you spoke, or any of them? A. The question implies that there are such papers, and I therefore decline to answer the question.

Mr. PARSONS :

I think we may as well here, as at any other part of the investigation, learn whether we are or not entitled to have Mr. Field state if there are any such papers.

Mr. TILDEN :

I suppose you have right to ask whether there are such papers, but when you come to ask as to the contents of these papers, if the papers contain anything which is protected by privilege, then the objection would come up. My impression (of course I have not been lately studying the question of the limitation of privilege) is that the question whether or not there are such papers would be admissible.

Mr. FIELD :

"Such papers." I answer at once that I have papers belonging to my clients; that is to say, such papers would disclose their contents.

Mr. TILDEN :

I do not think that privilege extends so far as to exclude the stating that there were papers in a particular suit or proceeding, because the fact of the existence of such a suit or such a proceeding would not be a fact communicated to you in confidence by your client; but when we come to ask for the contents of these papers, then it would be very likely to contain the thing privileged.

Mr. FIELD :

Does not the character of the papers depend on the contents? I am asked whether I have a constitution of a secret society, and I am obliged to answer that question; I am answering that there is a secret society that has a constitution.

Mr. CURTIS :

May I make a suggestion? I understand the witness to have said unequivocally, over and over again, that he never had any communication with any one on the subject of any official conduct of Judge Barnard, except common talk around in the streets, and things of that kind, that did not come to him from his clients, if he ever had any such conversation. That answer, according to my understanding of the rules of evidence, and the statute of privilege, precludes all inquiry into the facts and circumstances beyond that. That seems to me to be almost a necessary result.

Mr. TILDEN :

My impression would be that the fact of a suit—the existence of a suit, and the nature of the suit, may be inquired about; but when it comes to an inquiry about any fact contained in the document, or any communication orally made, if they are communications of the client to the counsel, for the purpose of obtaining his professional advice, that the privilege would attach, subject to any exceptions which exist to the rule.

Mr. CURTIS :

The inquiry was whether there was any communication to the witness on the subject of Judge Barnard's official conduct; his answer is that there never was, except in the relation of counsel and client. That answer having been given, I do not know how you can inquire into the fact beyond that.

Mr. PARSONS :

Does it yet appear that there is anything to which this question of privilege attaches?

Mr. TILDEN :

I think not yet. If a question of professional privilege should arise, I would reserve the question until I could look into the matter more fully. I should, acting for the Committee to-night, and acting on my own responsibility, say to counsel on each side, that I think the Committee would hear a brief discussion as to the nature and conditions of the question of privilege.

Mr. CURTIS :

It is not a matter in which I or my client has any interest. I am only making a suggestion as to the position of the witness.

Mr. TILDEN :

I have some vague recollection of an inquiry, even in a case of privilege, having been prosecuted to this point—the point involved in the present question.

Mr. PARSONS :

I suppose, before the privilege attaches, there is a right to ascertain whether there was any communication on the subject?

Mr. TILDEN :

There is a right to ascertain enough to know that there is a case to which the privilege would attach. It must be within the judgment of the Court to determine whether there is a privilege or not ; and the Court cannot be shut off by the declaration of the witness that he does not know anything but what is privileged ; that would be to substitute the judgment of the witness for the judgment of the Court.

Mr. PARSONS :

We therefore suggest that Mr. Field answer the question in the shape in which it is put by Mr. Tilden, and that is, whether any such papers ever were, or now are, in his possession. Will Mr. Field please to answer that question.

Mr. FIELD :

I will first hear what the question is.

Mr. TILDEN :

You will have to go back and find what such papers were.

Mr. PARSONS :

Such papers as Mr. Field spoke about in his last examination.

Mr. FIELD :

Put the question in such a way that it will be intelligible in itself.

Mr. PARSONS :

Do you not understand to what papers my question refers ?

Mr. FIELD :

I decline to answer that question. Put the proper question in a shape in which I can answer it.

Mr. PARSONS :

Is the question ambiguous or unintelligible ?

Mr. FIELD :

Do you presume to put that question to me ?

Mr. PARSONS :

Yes ; I want to know.

Mr. FIELD :

I will not answer it.

Mr. PARSONS :

Then if Mr. Field does not complain that he cannot understand to what papers the question refers, I desire an answer to the question.

Mr. TILDEN :

I think the question ought to contain within itself a little more definite description of the precise things you wish answered.

Mr. PARSONS :

In deference to the suggestion of the Committee, I will frame the question.

Q. Are there now, or have there ever been in your possession affidavits or other papers, one or more, having any relation to, or in any way bearing upon any charge against Judge Barnard for misconduct in office? A. As far as the question relates to suits pending, or suits brought, I am ready to answer by referring to such suits, if you desire it; so far as it relates to any other matter which I myself have prepared, or had in my possession, they are all, so far as I recollect, papers which I prepared in professional confidence with my clients, and I decline to mention them.

Mr. TILDEN :

If you desire to know anything about suits pending—

Mr. FIELD :

I meant suits brought; I mentioned these because it is very well known that in the first Erie litigation there were suits to which Judge Barnard's name was a party; they are a matter of public record, perfectly well known, and I suppose the counsel does not inquire as to them.

Mr. PARSONS :

I do not. I suppose these papers might possibly be protected by the privilege to which Mr. Field refers.

Q. Had the papers of which you have just spoken, as having been prepared by you any relation of any kind to Judge Barnard, or reference to him? A. It appears to me that that question would infringe upon the privilege, and I therefore submit that I am not bound to answer the question.

Mr. PARSONS :

Here comes the direct question, shall we be informed whether or not the papers which Mr. Field admits he did prepare had any reference to Judge Barnard.

Mr. FIELD :

I did not intend to admit that there were any papers prepared at all. I beg to be understood; I did not admit that there were any whatever.

Q. Have you not stated that you were in possession of affidavits charging Judge Barnard with misconduct in office? A. I have no recollection of having stated so.

Q. Have you not stated that you were in possession of affidavits and other papers, one or more, bearing upon Judge Barnard's judicial

action, either in substance or to that effect? A. I have no recollection of having said anything of the sort. I certainly was in possession of papers bearing upon his judicial action, as you have been already informed, in the suits that were brought.

Q. No other papers than those? A. I do not remember having ever stated that I was in possession of any such papers.

Q. Any other papers? A. I do not remember having stated that. This is, if the Committee please, contrary to all rule. The rule is to call the attention of the witness to a particular time and place and person.

Mr. PARSONS.

That is only where you propose to contradict the witness. We do not propose any contradiction in this case.

Mr. FIELD:

But the witness has a right to have an indication as to the time and place. If you can mention any such person, I would like to know him.

Mr. TILDEN:

It would not be good as a contradiction unless the person was named.

Mr. PARSONS:

It is plain that there is no use in our proceeding further. What we desire is the determination of the Committee whether Mr. Field shall be compelled to answer whether he has ever seen or had such papers.

Mr. TILDEN suggested that the question should be reduced to writing and submitted to the Committee in the morning for determination.

Mr. CURTIS:

I want to ask a question on another branch of this subject. Is it not a very serious and difficult question of Federal jurisprudence whether Congress can rightfully pass a law ordering a suit in a State Court to be transferred into the Circuit Court of United States, because one of the parties is a corporation created by Congress, when there are other defendants whose citizenship is in the same State with the plaintiff, or when all the other defendants do not apply for the removal of the cause, on the ground that they are citizens of the State or States other than the State of the plaintiff. A. Undoubtedly it is.

By Mr. PARSONS:

Q. Did Judge Barnard find any difficulty in deciding that question in favor of Mr. Fisk? A. That is more than I can tell; you will have to ask him yourself, I think.

The Committee then adjourned until March 28th.

*In the matter of the Charges preferred against Judge Barnard
before the Judiciary Committee of the Assembly.*

NEW YORK, March 28th, 1872.

Present—Messrs. PRINCE, STRAHAN and TILDEN.

THOMAS C. DURANT, a witness, being duly sworn, testifies:

By Mr. CURTIS:

Q. Were you Vice-President of the Union Pacific Railroad Co. in March, 1869? A. I was.

Q. Were you examined as a witness in that case in some proceedings before Judge Barnard on the 29th of March, 1869? A. I don't recollect the day, but I was before Judge Barnard as a witness.

Q. On several different days? A. Two or three consecutive days.

Q. Was anything said by you on the stand while you were present in Court about any remarks attributed to Judge Barnard, to the effect that he had driven one set of men out of New York, and would, or might, or intended to drive out another set—was anything of that kind said in your presence by any one. A. The remark was referred to; if you will allow me to state the way.

Q. Please answer yes or no to that. A. Yes. Such a remark was referred to.

Q. In your presence? A. Yes, sir.

Q. Did you make that remark, or did you refer to it; or did Judge Barnard make it there? A. I referred to it in answer to a question that was asked. In reply to some question that was asked, I said the Board of Directors regarded that suit as a blackmailing suit, and, in fact, that they had been told that they would have to "come down" or leave town. The question was then asked, who made this threat, and I said, "Some such remark has been attributed to your Honor." I think the Judge then asked me to tell him on what authority, or who said it, and I gave General Frank P. Blair as my authority.

Q. Did Judge Barnard say then from the Bench that he had driven one set of scoundrels out of New York, and he meant to drive another? A. He did not. He afterwards asked the question if I didn't refer to a remark that he made at the Astor House, or something of that kind.

By Mr. PARSONS:

Q. What did Judge Barnard say was the remark he made at the Astor House? A. He asked if I didn't refer to a remark he had made at the Astor House that he had driven one set of scoundrels out of town, and that he would have to another.

Q. Did you tell him that you did refer to that? A. I told him I did refer to that; I supposed that was it.

DAVID DUDLEY FIELD, a witness, again took the stand for further examination.

Mr. VAN COTT :

We submit, Mr. Chairman, that having asked a number of questions, which were not answered, or not completely answered, it would be better to settle the general question of the limit of the privilege of the witness before we proceed to ask other questions. No single question will comprehend the whole case, and it is better after the Committee has determined what the limit is, to frame our questions with reference to the limit as defined by the Committee.

Mr. PRINCE :

The Committee will, before making this decision, hear, if gentlemen choose to make them, such remarks as they desire, not exceeding fifteen minutes on each side.

Mr. CURTIS :

Will the Chairman permit me to make a preliminary explanation of my position in reference to this matter. I will be very brief. There are three objections, which, if we were not under the ruling of the Committee, which has been so frequently referred to, would be proper for us to make to this testimony, or the proposed testimony. One is, that it is mere hearsay. Another is, that it relates to a matter anterior to the present term of Judge Barnard in office; and the third would be that there is no charge before the Committee to which it has any relation. But these objections, which are the only ones that it lies in the mouth of Judge Barnard to make, or could make, have been so repeatedly overruled by the Committee, and the rule is so peremptory, that objections of that nature made by us, cannot be discussed that we have nothing to say in our own persons, or as representing Judge Barnard. In regard to this course of inquiry to the present witness, we have no right to intermeddle with the question in any way as to whether or not the witness is protected from answering this question. I wish it to be distinctly understood by the Committee that we have expressed no wish to Mr. Field which can in any degree affect his course in regard to this matter.

Mr. TILDEN :

With that understanding, do you still feel disposed to discuss the question.

Mr. CURTIS :

Not unless I am asked by the Committee to do so as mere *amicus curiae*. As representing Judge Barnard, I have no right to intervene. It is a thing entirely between Mr. Field, his clients and this Committee. I have no desire to be heard upon it as representing Judge Barnard.

Mr. VAN COTT :

The inquiry we propose to make of Mr. Field in substance is, whether he has in his possession, or has had in his possession, any paper or papers specifying any act or acts of Judge Barnard in his office as

Judge of the Supreme Court, which were imputed as acts of mal or corrupt conduct in office. After we have established the fact that Mr. Field has or has had in his possession such paper or papers, the question will be whether he shall answer, whether those papers contain any such specifications or facts, and whether he will produce the papers, that the Committee may inspect them to see what are the specifications of facts. Mr. Field has very properly taken an objection here to disclosing any communications made to him by clients affecting their rights and liabilities. To that extent we concede the rule of privilege to exist. We think that there is a sharp line drawn between the general rule which fixes the privilege and the exceptions to the rule. There are certain facts which may be characterized as the client's facts. They are his while they are in his own breast, and they are equally his when he discloses them to his professional adviser. This privilege of his against disclosure is the key to the secrets he communicates to his counsel, and he may lock or unlock those secrets at his pleasure, the privilege being his. We admit the general rule to be that, where a client has communicated to his counsel any fact which touches a personal right of the client, whether it be a right of person or a right of property, or which touches any exemption or liability of the client, whether in respect of his person or property, the communication of the fact to the counsel is protected, and the counsel cannot be required to disclose the fact. The distinction we draw in this case is this: the acts and the conduct of Judge Barnard are facts which do not belong to the client. They are public acts, public facts, which any person who is in possession of them may be required to disclose in the course of any public and official investigation. Let me illustrate. If a client of the witness disclosed to him that he had seen a suitor pay a bribe to the Judge for a decision, that would not be a privileged fact. It would not be a fact touching the client, either in respect of a right of person or property, as a right to be enforced, or as an exemption from a liability to be maintained. If a client of the witness had disclosed to him, that he had heard a Judge avow that he would, with reference to certain suitors, decide cases upon the ground of favoritism, that he would decide cases in favor of particular parties, and against other parties, because one set were his friends and the other were his personal or political enemies, that would not be the client's fact. It would not touch a right or an exemption from liability of the client, and both, client and counsel, under the rule, could be required in a proper case to testify to the fact.

Now, that indicates the precise line of distinction we wish to draw. We suppose, that on a certain occasion, statements of facts were put upon paper—facts within the knowledge of the witness, or facts communicated to the witness by others, touching the acts and conduct of Judge Barnard, which are claimed to have been violations of his duty as Judge, and amounting to malconduct in his office as a Judge; and that these facts, having thus been put on paper, will, if the paper is produced, furnish information to the Committee relevant to the investigation touching the official conduct of Judge Barnard. The

general rule, of course, is, that all witnesses are bound to testify to all relevant facts within their knowledge. An exception to that general rule is on the exception of privileged communications. The exception is limited. It is limited to facts touching the case, or the interest of the client himself, and upon the manifest public policy that the client, having certain rights which may be the subject of judicial proceedings, he may, in anticipation of those proceedings, or pending those proceedings, safely consult counsel, and be protected in the disclosure which he makes to his counsel of all facts relative to the rights which are in litigation, or which may become the subject of litigation.

Mr. TILDEN :

Whether there is a suit actually pending or not ?

Mr. VAN COTT :

Yes; that does not make any difference. There are professional relations, and there are also social and political relations, between counsel and client. While the professional relation, and every confidence that falls within the professional relation, is protected, statements made in a social or political relation do not fall within the policy, the reason and protection of the rule. Take a case which will clearly illustrate this: There is a committee of seventy gentlemen, who have been engaged in the investigation of alleged frauds in connection with the municipal administration of this city. There have been various counsel employed by those gentlemen, or in consultation with them. Mr. Booth, who is one of the Committee of Seventy, stated before this Committee that he made an investigation into the accounts in the Comptroller's office. Now, suppose that one of this Committee of Seventy, engaged in this public investigation, communicated to the numerous counsel they consulted with in connection with that litigation the documentary facts which fell under their notice, for the purpose of some public action taken in respect of them, I beg to know whether the counsel to whom such facts had been disclosed could avoid their disclosure on the ground that they had been communicated to them as counsel by gentlemen who occupied this *quasi* or actual relation of client to them in this public investigation. If the matter disclosed did not touch any right of Mr. Booth in his person or property, or any exemption of Mr. Booth from personal liability, but related merely to these public proceedings and these public interests, then I submit that the facts communicated by him to counsel would not be within the reason on which the rule which protects confidential disclosures rests.

We submit that the inquiry that we are making falls clearly within the exception to the rule, and not within the rule itself.

Mr. PRINCE (to the witness):

Do you wish to raise the objection yourself ?

The WITNESS:

If you wish me to state it again, I will do so.

Mr. TILDEN :

We will hear from Mr. Curtis, if it is agreeable to him to make any observations on the subject.

Mr. CURTIS :

As I said before, in the capacity of counsel to Judge Barnard, I have nothing to say. But, if the Committee desires me to state my opinion about the rule, I will state it.

Mr. TILDEN :

The Committee will be happy to hear your statement without attributing it to Judge Barnard at all.

Mr. CURTIS :

I understand the rule to be very different from that claimed by the gentleman on the other side. I understand its foundation to be in the public policy which is established for the purpose of affording the utmost right of protection to the good people of the State in their resort to persons learned in the law, whether as counsel or attorneys, or as associates of counsel or attorneys, or their clients or their agents, I understand that the object of the rule is that the right of absolute secrecy shall be thrown over everything that takes place between a citizen when he comes to consult counsel in regard to any matter whatever, whether it be a thing that touches his own personal rights and interests, or otherwise, and that the rule extends to the exclusion of the name of the client as well as to the subject matter which may have been the subject of conference between them. Therefore, according to my understanding of the rule, the rule was infringed last evening, when Mr. Field was required to state the names of his clients who had spoken to him on certain subjects. I understand the rule to be an absolute immunity of the citizen to have even his name disclosed when he goes to consult his professional adviser. I do not understand the rule, therefore, to be one that is to be administered in the form in which my learned friend has suggested it; that is to say, that there is a general principle, and that it is subject to these exceptions. I understand that it is subject to no exceptions when it appears that the relations of counsel and client exist. If the relation of counsel and client did not exist, as for instance, I meet a man on the street, who may stand in other matters, or may have stood theretofore in other matters, in the relation of a client to me, and he tells me a fact of the declaration made by Judge Barnard as to what his course would be, or might be, or that he had seen a bribe paid to Judge Barnard, I do not understand that that comes within the principle of protection. But if that gentleman came to me as his adviser, and shut himself up with me in my chamber, and consulted with me about anything as to what he should do thereon, then I understand that not only the subject matter is excluded, but that the name of the person who so consulted me could not be required in any Court of Justice.

Now, if the Committee will look into the morning papers, they will

see a complete illustration of the operation of the rule in the proceedings that took place before a Committee of the Senate of the United States, yesterday, and the analogy is perfect. Senator Sumner was subpoenaed to attend before a Committee of the Senate, in reference to a certain investigation which that Committee was carrying on, and he was asked the name of the person or persons who had communicated to him certain facts which were supposed to be within the scope of the inquiry that the Committee were carrying on. He said: "Those facts were communicated to me in my capacity as a Senator, and I decline to answer." He refused to give the name of the person who communicated them to him, and the Committee did not require him to do it. That is all I have to suggest.

Mr. TILDEN:

Suppose the particular fact was a fact that was known not only by the communication of the client to counsel, but which the counsel did in fact know, or might have known likewise from sources independent, he would not be privileged?

Mr. CURTIS:

I do not suppose he would.

Mr. TILDEN:

Suppose the fact was in its nature a public fact.

Mr. CURTIS:

Do you mean a notorious fact?

Mr. TILDEN:

I mean a fact not within the exclusive custody or interest of the particular client. Suppose it were a fact about the public record—suppose it were to prove the loss of a paper—are there not some cases in which the privilege has been held not to extend; and that a person may be required to prove the loss of a paper in order to admit secondary evidence of its contents?

Mr. CURTIS:

If the paper had ever been in the possession of the counsel in a confidential relation, I claim that he could not be called upon to prove its contents.

Mr. TILDEN:

Are there not cases where he would be called upon to prove its loss or destruction?

Mr. CURTIS:

I am not aware there is any such case. Provided the paper was in the possession, and came to the knowledge of counsel in a confidential communication from his client, I suppose he would be protected from proving the paper or its contents, or anything else, or even the fact of its existence.

Mr. VAN COTT:

It appears to me that the supposed analogy in the case of the Senate of the United States entirely fails. I shall not undertake to discuss the question of the limit of the privilege of Senators. Senator Sumner put his refusal to state the fact on the ground that it was the privilege of the party who communicated the fact to have the fact undisclosed, and therefore, that is not the question that is here; and certainly a proposition of the kind supposed to have been asserted by Senator Sumner, must be taken with a great many qualifications. A person comes to a policeman and says, "I saw a burglary, I saw a larceny." Well, the policeman is no less a public officer than a Senator, and if he were called into Court to answer whether a communication had been made to him by a citizen as to the burglary, could he protect himself against the disclosure upon the ground upon which this communication is claimed to be privileged, or upon the ground which Senator Sumner is supposed to have taken in that case? Take the case put by Mr. Tilden, which it seems to me, is a very fair illustration. It becomes necessary to produce a paper in a case, or to get secondary evidence of its contents, and to lay the foundation for giving secondary evidence, the party in possession, or supposed to be in possession, is inquired of if he has not the paper, or does not know where it is. And he says he has not the paper and does not know where it is. The counsel for that party is at once put upon the stand and asked, "Is that paper in your possession?" If it is in his possession, and it came into his possession from his client, can he refuse to answer? I remember a case, in a volume that I read many years ago—an English book—which goes to show the skill that Sir William Follett possessed. An instance is mentioned of a trial of his, involving the title to a very large property. The attorney in the case had neglected to take precautions to lay the foundation for the introduction of secondary evidence. After some adroit questions, put by Mr. Follett, he suddenly put the attorney for the defendant upon the stand, and inquired of him whether he had such a paper, whether he received such a paper from his client, whether he had made search for the paper, and whether the paper could be found. And he elicited such answers from him as enabled him to offer secondary evidence of the document, which is the precise case put by Mr. Tilden.

But it seems to me, that the reasons which I suggested, limiting the rule, have not been answered by the *amicus curiæ*, as the gentleman on the other side chooses to describe himself. The rule, I understand, to be one of public policy, with reference to the security of clients dealing with their own personal rights; and I think that no case can be found in the books which carries the rule beyond that limit. They are the client's facts which are protected, and nothing else. The public facts which relate to other persons, official or unofficial, not touching the private rights of the client, and not the client's, and do not fall within the policy or reason of the rule of privilege.

Mr. TILDEN:

Suppose it was a public paper, and record of the Supreme Court, that the counsel had seen in Court, or had seen in the office of the clerk of the Court, and it was destroyed, and the loss had been accounted for; and suppose that, at the same time, the facts contained in it had been facts communicated under circumstances which might be thought privileged; that would be a case where the information might have been derived from the client, and also was derived from a public document, or an official document, which might be independent. The Committee have not had an opportunity to examine this question as a legal question. I sent over to get Cowan and Hill, and I notice here on page 137, that an attorney "may be called up to prove the existence of a paper, and that it is in his possession, but cannot be compelled to produce it, or prove its contents, it being intrusted to him in his professional character," and on that *Coveney v. Fannahill*, in 1 Hill and *Kellogg v. Kellogg*, 6 Barbour are cited.

It is, of course, a very brief citation of the case. There is a case, I remember, somewhere, but which I do not remember with sufficient distinctness to state, in which it was held that the destruction of a paper could be proved for the purpose of admitting secondary evidence of the contents, even though that paper was received in a confidential relation. Whether I can find any reference to it, I do not know.

The chairman desires me to state, however, that the Committee will not undertake to act by laying down any general principle, except to say, in a very general manner, that it proposes to respect the privilege as respected by courts of justice, but they must determine each separate question by itself, that each question must stand on its own merits. They cannot undertake to determine by general rule.

The counsel must prepare the questions, submit them, and the Committee will rule upon them in their order.

Examination of Mr. FIELD resumed.

By Mr. PARSONS:

Q. Have you ever had in your possession, or seen any affidavits or other papers, one or more containing any statements in respect to the judicial action of Judge Barnard? A. I shall wait for the Committee to make a direction in each case.

By Mr. PRINCE:

Q. You claim the application of the rule, do you? I presume from the fact that you do not answer, you claim the privilege of the rule. A. This particular question you see is idle, because I have seen them here on your table. I should have to say I have; but that is not what they mean.

Mr. PRINCE:

I do not see but that this question may be answered.

The WITNESS :

Only that it will lead to something else.

Mr. TILDEN :

Answer that, and we will decide upon each question as it is asked.

By Mr. PARSONS :

Q. My question is this : have you ever had in your possession, or seen any affidavits, or other papers, one or more, containing statements in respect to the judicial action of Judge Barnard ? A. Yes, sir.

Q. Was any such paper ever in your possession ? A. Yes.

Q. Is such paper in your possession now ? A. I do not know.

Q. When was any such paper last in your possession ? A. This morning.

Q. Was that a paper in a suit ? A. It was a paper—no, it was a newspaper.

Q. Is that the only paper of the character mentioned which has ever been in your possession ? A. Oh, no.

Q. Have you ever had in your possession a manuscript paper prepared by yourself, or under your own direction, containing statements in respect to the judicial action of Judge Barnard ? A. Any paper which I may have had in the purview of your question, as I understand it, was a paper containing information given by my clients, communicated to me confidentially, taken down by me as their counsel, and not put in my control.

Mr. PARSONS :

I am at a loss whether the witness means by his answer to admit that there was such a paper, or to decline to answer whether there was or was not such a paper.

Q. Was there such a paper ? A. That I decline to answer.

Mr. PRINCE :

The Committee consider that a proper question.

The WITNESS :

I decline to answer certain questions, not for any reason personal to myself, but because I think it unbecoming in a lawyer to state the communications between himself and his client. I had supposed that the confidence extended as well to what counsel said and did in the presence of his client as to what the client communicated, because I do not see how, if the counsel is obliged to state what he said and did, he can protect himself if he is not protected in showing what information was given to him. But the Committee appear to think differently ; and, as I do not wish to give them the trouble of laying the matter before the Assembly, I will answer the question. I did receive information from my clients, and I prepared a memorial to the Legislature—I believe no other paper whatever. It was not signed, except by one of my clients, and he afterwards told me that he was

mistaken; he was satisfied, and the paper remained in my hands unused.

Q. Who was the client who signed the paper? A. I do not mean to answer any question unless it is shown it is by compulsion of the Committee to make myself right. I have no personal right—it is a question of professional propriety.

Mr. PRINCE:

The Committee do not think you are compelled to answer that question.

Q. Who was the person of whom you spoke in your last answer as your client?

Mr. PRINCE:

The same ruling will apply.

Q. I mean the person who communicated the information to you?

Mr. PRINCE:

The same ruling.

Mr. TILDEN:

You have already four names mentioned by Mr. Field yesterday.

The WITNESS:

Yes, sir; I think there were others; I do not mean to say they were all.

Q. You have mentioned Mr. Jay Gould as a client in connection with certain information received by you, or certain papers which may have been prepared by you? Was he a client or one of the clients in the proceeding or professional business, embracing the preparation of that paper?

Mr. PRINCE:

The same ruling on that point.

Mr. TILDEN:

You may ask Mr. Field, I presume, whether any of the facts contained in that paper were derived by him from any public source independent of his client.

Mr. PRINCE:

From any other than a privileged source.

Mr. STRAHAN:

Mr. Field has stated, if I remember, that the information which was received was received from his client.

By Mr. TILDEN:

Q. Did that memorial contain any statement or fact which you de-

rived from any other source than your client—from any public document, or record, or any independent source? A. I think not.

By Mr. PARSONS :

Q. Are you able to state, from any present recollection, that more of that information was obtained from other sources? A. No further than I have stated—I think not. I will not undertake to affirm positively that there was no allusion to public rumor, or to rumors of any kind, but my impression is very decided that there was not.

Q. To whom does the paper of which you speak, now belong? A. To my client. That property belongs to my client, as I conceive.

Q. Will you name them, please? A. Oh, no.

Mr. PARSONS (to the Committee) :

Is it possible that we have no right to show who is the owner of the paper?

The WITNESS :

It is asking indirectly who was the client.

Mr. PARSONS :

Do the Committee lay down the rule that we have no right to know who is the person of whom the witness speaks as his client?

Mr. PRINCE :

If he declines to answer, I assume that he does.

Mr. PARSONS :

That will be regarded then as the ruling of the Committee.

Mr. TILDEN :

You have a right to pursue the line of inquiry suggested; that is to say, if you have any reason to suppose that the witness derived any information contained in that paper from any source independent of a direct communication from his client in their confidential relations, you have a right to interrogate him about it. I do not think it has been sufficiently asked.

The WITNESS :

I think I have answered that very fully.

Mr. TILDEN :

You answered it generally.

The WITNESS :

I mean to say that I have no present recollection of such a thing. What happened four years ago is not always a matter about which you can be certain in respect to one's memory, and I give you my best information.

By Mr. CURTIS:

Q. How long since did you say it was? A. It was in 1868; the particular proceeding was four years ago. A great many things have happened in the mean time. (To the stenographer) Underhill, do you put down everything?

The STENOGRAPHER:

I aim to do so.

The WITNESS:

Then put down, I ask if you put down everything.

By Mr. PARSONS:

Q. Did the statements of the memorial touch any right, claim, or liability of the person or persons of whom you speak as your clients? A. I decline to answer anything in respect to the contents of the paper.

Mr. TILDEN:

We think that is proper.

The WITNESS:

If the Committee rule I must answer, I will; but how can I do that without stating what the contents are? "Any right?"

Mr. TILDEN:

They propose to test the principle of the ruling, I suppose. I do not see any objection to answering that. It does not ask you to disclose any fact about your clients, or any fact communicated. It merely asks the nature of the facts, whether they related to any right or liability or exemption of your client, with a view to see if it comes within the rule which Mr. Van Cott laid down in his argument, I suppose.

The WITNESS:

You have only to rule. What is the question?

Q. Did the statements of the memorial touch any right, claim, or liability of the person or persons of whom you speak as your clients?

A. As I understand it, they did.

Q. Were the transactions of Judge Barnard, stated in the memorial, transactions in a suit or any other proceeding to which were parties the persons you speak of as your clients? A. I decline to answer. (To the Committee.) It is only an approach to get exactly what you have excluded—were they transactions relating to such a person or to such a person?

Mr. TILDEN:

We do not suppose that would identify the clients. Some you have mentioned the names of, and others you have not. It merely inquires whether these facts relate to any suit.

Mr. PARSONS :

Whether they relate to any suit or other proceeding to which were parties any of these persons, whom Mr. Field speaks of as his clients.

Mr. TILDEN :

The privilege would go beyond actual proceeding. It would go to general advice as to whether a proceeding should be instituted or not, or to general advice as to whether there was a remedy or not. Still I suppose you might elicit information to know which class of cases it belongs to.

Mr. PARSONS :

We might perhaps elicit information to know whether it belongs to any privileged class. The question is, were the transactions of Judge Barnard stated in the memorial transactions in any suit or other proceeding to which were parties the persons of whom you speak as your clients?

Mr. TILDEN :

Or any of them?

Mr. PARSONS :

Or any of them.

Mr. TILDEN :

That includes as well those whose names are not mentioned as those whose names are?

Mr. PARSONS :

It includes everybody whom Mr. Field claims to be in the relation to him of client.

Q. Was the action of Judge Barnard stated in the memorial, his action in any suit or other proceeding to which were parties, the persons of whom you speak as your clients, or any of them? A. Any of my clients, I suppose it means.

Mr. TILDEN :

That includes the unnamed as well as the named? A. According to my best recollection, it was.

Q. Did the memorial in its substance and scope specify anything except the acts of Judge Barnard therein claimed to be acts of official misconduct? A. I decline to answer the question.

Mr. PRINCE :

That does not seem to be directly to the point as to whether it falls within the class of privileged questions.

The WITNESS :

It calls for the scope, and is an indirect way of asking for the contents.

By Mr. TILDEN:

Q. It was a memorial to the Legislature? A. It was. It was a memorial to the Legislature in respect to Judge Barnard, made out from a communication made by my client.

By Mr. PARSONS:

Q. I will state the question again. Did the memorial in its substance and scope specify anything except acts of Judge Barnard therein claimed to be acts of official misconduct? A. I decline to answer the question, and I will add unless instructed by the Committee to do so.

Mr. PRINCE:

That question is disallowed on the ground that the substance of the memorial cannot be gone into unless such parts of its substance as did not come from the client

Q. Were the clients for whom you prepared the memorial, those from whom you obtained all the information upon which it was prepared? A. That I am unable to say.

Q. Was Jacob Sharpe a client in connection with the preparation of the memorial? A. I decline to answer.

Mr. PARSONS:

Have we not a right to show Mr. Sharpe was not his client?

Mr. PRINCE:

I think not. It is getting at information in a negative form.

Q. Who was the person of whom you speak as your client, and who told you that he had discovered that he was mistaken in respect to any statement incorporated in that memorial? A. I am surprised that should be asked, when the question has been put in that form and ruled out.

Mr. PRINCE:

It has not been ruled in that form, though we will make the same ruling.

Mr. PARSONS:

Will the Committee permit me to ask whether they intend to suffer Mr. Field to state what has transpired with his client, and yet sustain his refusal to furnish the name of the client? because, that is this case. Mr. Field has stated what transpired between him and his client. We ask who was the client, and he objects to furnish the name.

Mr. PRINCE:

If he chooses to waive the privilege; so far as that is concerned, that does not open the door.

Q. Were the facts stated in the memorial such as could be used in evidence to establish or defeat any private right of your clients as

distinguished from the alleged or supposed official misconduct of Judge Barnard? A. I decline to answer unless required.

Mr. VAN COTT:

Will the Committee allow me to suggest, without argument, that if this question is answered in the affirmative, it does not commit the client because the paper is not produced. If, on the contrary, the question is answered in the negative, it shows that the paper related purely to the official conduct of Judge Barnard. It draws a line of distinction where I drew it, between the private acts, which are the right of the client, and the public acts of the Judge, which are the subject of inquiry.

Mr. TILDEN:

We prefer that you approach directly any specific fact which you wish to bring out. There is some difference of opinion on this question. If there is any specific fact you desire to bring out that was public in part, and derived from sources other than confidential communications, the Committee suggest that you come directly to it.

Mr. PRINCE:

Although your question before the last seems to cover this one, I am inclined to think this is admissible, but the Committee are not clear on the subject.

Mr. PARSONS:

Is what Mr. Tilden means that the inquiry must be directed to some specific fact stated in that memorial?

Mr. TILDEN:

What I mean is this: if there are facts which are derived from some other source than a communication from the client, as well as from that source, that you have knowledge of, or suppose you have knowledge of, it is simply to suggest that you inquire about them.

Mr. PARSONS:

I do not think the Committee really appreciate our position, which is that of parties who are endeavoring to ascertain information. It would be quite needless to inquire if we possessed the information.

Mr. TILDEN:

The Committee will not undertake to influence the course of your inquiry.

Mr. PARSONS:

We shall be glad to acquiesce in the suggestions of the Committee.

Mr. TILDEN:

The Committee do not, of course, understand the end to which you direct your questions.

Mr. PARSONS :

The end we desire to accomplish is to convince the Committee that the objection taken by Mr. Field is not well taken, and that the facts stated in the memorial did not come to him in any such way as entitles him to decline to communicate them, upon the ground upon which he puts his refusal. That is the object of our inquiry.

Mr. PRINCE :

If you direct your question to the way in which he came in possession of the facts—

Mr. TILDEN :

I understand Mr. Parsons proposes to show that, by the nature of the facts, they are public facts, and not private facts.

Mr PARSONS :

Precisely.

Mr. TILDEN :

And you endeavor to make that distinction by a supposed difference between facts communicated, for the purpose of drawing a memorial, looking to some public action against a judicial officer and facts that are stated for the purpose of maintaining or defending some right of the party ?

Mr. PARSONS :

That is precisely so, although we may go further and say, we desire to show that these facts do not bear at all upon any private rights of the parties of whom Mr. Field speaks as his clients ; that the facts stated in the memorial cannot be used either to establish or defeat any interest of his clients.

Mr. STRAHAN :

That question is put under your theory that this rule only protects rights which might be established—the rule laid down by Mr. Van Cott. Two of the Committee do not agree with you.

Mr. VAN COTT :

May I put to you a question as eliciting what you do and what you do not mean ? Suppose it were stated that that memorial contained nothing but an allegation that Judge Barnard (and I merely state this as an illustration) had, on a particular day, received a bribe from a person named, and that that was the fact disclosed to Mr. Field by some client of his, and Mr. Field had put that on paper with the view of sending it to the Legislature, I suppose that the client has no interest there, which is the subject of protection by the rule, relating to privileged communications.

Mr. TILDEN :

Is not the ground of the rule that the transaction not being one

which the law allows, or out of which no right could arise, it would not be the subject of the privilege.

Mr. VAN COTT :

It is not on that ground, because if the client had told the counsel that he himself had bribed the Judge, I admit that that would then be privileged. It would be an act of precisely the same character; but the difference is that then the disclosure prejudices the client, and in the other case the client is not a party to the question of prejudice at all.

Mr. TILDEN :

He has no connection with it.

Mr. VAN COTT :

He has no interest in it except the common interest of a citizen.

Mr. TILDEN :

It is merely a fact that he makes subservient to his general policy

Mr. VAN COTT :

Yes, sir.

Mr. TILDEN :

I understand it; that is your ground.

Mr. PRINCE :

The majority of the Committee consider that is coming within the rule already given.

By Mr. PRINCE :

Q. Did the memorial contain statements derived from any papers or files in the public offices of the State or the city? A. I do not remember that it did.

Q. Do you remember that it did not? A. I do not. My recollection of the contents of the paper is very indistinct.

Q. Did the memorial of which you have spoken contain statements derived by you from any other source than the communication with your client? A. I think I have already stated, to the best of my recollection, it did not. I said that I would not affirm that there was no allusion to rumor in it, but that the information was information so received from my client, to the best of my recollection.

Q. And from no one else? A. No, sir.

By Mr. PARSONS :

Q. Was any information you used in the preparation of that memorial obtained from the proceedings in the Supreme Court of New York, brought by Jacob Sharpe against the Mayor, Aldermen and Commonalty of the city of New York? A. Not so far as I remember. I suppose "no" is a better answer—no, as far as I remember.

Q. Was Jacob Sharpe one of your clients in regard to the preparation of that memorial?

Mr. PRINCE:

That was asked? A. I have answered that twice; it was ruled out.

Q. Did the memorial contain anything in relation to Judge Barnard's action in the suit or in respect to the claim of Jacob Sharpe against the city of New York? A. I decline to answer unless required. It is asking for the contents of the paper.

Mr. PARSONS:

That was a question put by leave of the chairman of the Committee.

Mr. PRINCE:

Oh, no.

Mr. PARSONS:

It was a question put in regard to some specific matter.

Mr. PRINCE (to the stenographer):

Will you read the previous question again?

THE STENOGRAPHER—(reading):

"Was any information you used in the preparation of that memorial obtained from the proceedings in a suit in the Supreme Court of the State of New York, brought by Jacob Sharpe against the Mayor, Aldermen, and Commonalty of the city of New York?"

Mr. TILDEN:

What do you mean by proceedings?

Mr. PARSONS:

I mean proceedings in that suit.

Mr. PRINCE (to the stenographer):

Read the last question.

THE STENOGRAPHER (reading):

"Did the memorial contain anything in relation to Judge Barnard's action in the suit, or in respect to the claim of Jacob Sharpe against the city of New York?"

Mr. PRINCE:

We think that comes under the same rule as the others.

Mr. PARSONS:

The Committee sustain Mr. Field, then, in his refusal to answer?

By Mr. PARSONS:

Q. When was it you received the information which you have stated your client furnished you, to the effect that he was mistaken in respect

to the information previously communicated? A. I am unable to say precisely, but not long after.

Q. What is your best recollection of the length of time? A. I cannot fix it more definitely than that—it was not long after.

Q. Can you not state whether it was a few weeks or a few months or more than a year afterwards? A. I think it was within a very few weeks, and it may have been within less than that. I cannot fix it more definitely.

Q. Did you visit or send to the Comptroller in connection with the preparation of that memorial on your gaining the information upon which it was based? A. I think not.

Q. Is that the best answer you can make, that you think not? A. It is the best answer I can make. I have no recollection of doing so, and therefore I give you the answer I have.

Mr. PARSONS :

That is all.

The WITNESS :

Before I leave I wish to state this : in the course of this examination something has been said about some suit to which Judge Barnard was a party. I wish to take this occasion to say that I am satisfied that the charges against him in those suits were erroneous, although the suits were brought in good faith, and in the firm belief on the part of the counsel and attorneys, and I believe of the clients, that they were justifiable. I am satisfied that it was an error, and I am ready to make the Judge all the reparation in my power.

By Mr. PRINCE :

Q. When was the allusion? A. It was an allusion yesterday. The gentleman did refer in his examination of me to those suits, and as that appears upon the record, I wish to say this now, and I leave you, gentlemen, to say whether that shall go down or not.

Mr. PRINCE :

The question is whether it will lay the foundation for another cross-examination.

The WITNESS :

That is a matter addressed to the gentlemen. I only say that I am persuaded that—

Mr. PRINCE :

Is this a repetition of what you said before?

The WITNESS :

It is a mere repetition.

Mr. PARSONS :

We have not furnished any testimony to establish any such charges,

but if this is to go upon the record, we should desire to know what were the charges to which Mr. Field refers?

The WITNESS:

I do not want it to go on the official records. I stated it to you, gentlemen. I think it is due to Judge Barnard; that is all, and I therefore do it because I think it is due.

Mr. PARSONS:

What direction will the Committee give as to its going on the official record.

Mr. PRINCE:

It will not go on the official record.

Mr. STICKNEY puts in evidence the finding in the case of the People against the Albany and Susquehanna Railroad Co., which is marked Charge 2, G1; also the opinion of Judge E. Darwin Smith, which is marked Charge 2, H1.

Mr. CURTIS puts in evidence the judgment and order of the General Term in the same suit, which is marked Charge 2, I1.

Mr. STICKNEY also puts in evidence the writ of assistance granted in the Chase suit which is marked Charge 2, J1.

Mr. CURTIS also puts in evidence the appeal to the Court of Appeals in the case of the People against the Albany and Susquehanna Railroad Co., which is marked Charge 2, K1. Also, the opinion of the General Term in the same, which is marked Charge 2, L1.

RUFUS F. ANDREWS, a witness, being duly sworn, testified:

By Mr. CURTIS:

Q. Were you counsel and attorney in the case of Goddard against Stanwood for either, and if so, which party? A. I was attorney and counsel for the defendant, Mr. Stanwood.

Q. State what you know in reference to any judicial action of Judge Barnard in that matter? A. I recollect that on Saturday—I am quite sure it was Saturday—26th of February, 1870, Mr. Stanwood came from Boston, and wanted to get his money which was in the hands of the Pacific Mail Steamship Company. I found that there was an *ex parte* injunction, which prevented the Company from paying it, granted by Judge Barnard. I made an *ex parte* application to Judge Barnard for an order dissolving that injunction. Judge Barnard granted the order, and I went with Mr. Stanwood to the office of the Pacific Mail Steamship Co. and presented this order. There was some consultation among some of the officers, none of whom did I know, and one of them said that they should not pay on that order of Judge Barnard's. Mr. Stanwood commenced to inquire the reasons, and got into a somewhat excited conversation, and became very angry, and thought that

something that was said was insulting to him and to the Judge. However, we came away, and he expressed himself that that was an insult to the Judge what had been said; we came away. I had occasion to go somewhere on some matter of my own, and I left him with the understanding that I was to meet him in my office in the course of an hour or two—when I got to my office I went over, I think, to the Court at Chambers. I am quite sure Judge Barnard was sitting at Chambers, but I am not certain whether I saw him at Chambers or in his private room; and I found that Mr. Stanwood had been there to see him, and represented to him that they had treated his order with contempt, and had obtained a letter from him to the Company; what the purport of the letter was I did not learn. Later in the day I saw Mr. Stanwood, and he related to me fully all that occurred. I told him that I thought the Judge was mistaken in regard to the nature of the order which he had granted to me; that the order did not direct the payment of the money by the Pacific Mail Steamship Co., but was simply a dissolution of the injunction. I called the Judge's attention to that, and the Judge directed Mr. Stanwood to go and procure a return of the letter; that he had not examined the order; that he had granted *ex parte* simply on my application or affidavit, supposing it to be perfectly proper, and that the letter was written under that misapprehension. I saw Mr. Stanwood again on the following Monday, when he told me that one of the officers of the Company had called upon him at the Metropolitan Hotel on that Saturday, late in the afternoon, and had informed him that he need not take any further steps in the matter; that all parties consented, and that the money would be paid to him on Monday. The letter, I had supposed, was returned until the matter came up here on the examination of Mr. Lowrey.

Q. Were you in Court before Judge Barnard at any time when the suit of Waddy *vs.* Eagan was before him? A. Yes, sir; I was in Court.

Q. Where were you? A. I was sitting on the Bench with the Judge. I came in to consult with him in reference to some of these matters that were going on before the Legislature. I sat there a short time. This case came up, and I listened to what was said. I knew General Eagan very intimately, and therefore took an interest in it.

Q. Will you state what took place when you were there? A. Well, I cannot relate all that took place. I recollect Mr. McMahon bringing up the case, and I think Mr. Harrison was on the other side—that is my recollection. There was quite a discussion between them; and I recollect that the Judge took the ground that the man had nothing; that he had been there in jail, and it was represented, I believe, that he was in poor health, or something of that kind; and he thought it was better to let him out, as he might earn something. Then there was some discussion about giving him his note, I recollect, for the amount, on being relieved on his own bond.

Q. Did Judge Barnard say in your presence, to the counsel, who had been arguing, "I will tell you about this thing; he borrowed the money in Baltimore to play faro"? A. I don't remember hearing any

such remark as that, and I do not think any was made. He did not pronounce it Pharaoh, as the witness pronounced it here on the stand; as I understood him to pronounce it in the ordinary way. He spoke of it being a gambling debt.

Q. Who did? A. Judge Barnard. I recollect his using the expression which the reporter stated, "Take nothing from nothing and nothing remains." It was in a conversational way.

Q. Did you hear Judge Barnard say, "Now, if you had come to me I could have told you, you never would get a cent of it back"? A. No, sir; I heard no such remark as that. I do not think he could have made any such remark, or I certainly should have heard it.

Q. Did you hear the counsel reply to him, "Judge, the amount of it is, this man is a good-natured gambler"? A. I did not hear any such remark.

Q. Did you hear Judge Barnard say, "I think it would be better to let him out, and let him go to gambling again"? A. I heard him say it would be better to let him out, and give him an opportunity to earn something, but not to go gambling again. He did not use any such expression as that, that I recollect.

Q. Did you hear counsel say, "I do not see how you have the power to do so; all the other Judges hold that a Judge has not that power"? A. That may have been said; there was something of that kind.

Q. And did Judge Barnard say, "Yes, sir; I have, if you have three thousand Judges to the contrary"? A. No, sir; I do not think any such expression was used.

Q. Did you hear the counsel ask, "What becomes of our claim if he gets out?" And did Judge Barnard reply, "You can put him back again"? A. Yes, sir; I recollect that; he did say, "You can put him back again." That was when he was discussing the question of his giving his own bond, I think; that he might be surrendered at any time.

Q. Did the counsel say in continuation of that discussion, "Not in this proceeding; we have got to have a new case." And did Judge Barnard say, "Yes, you can"? A. I do not remember.

Q. Do you remember about this being said by the counsel: "That is where the other Justices do not agree with you. I know your heart is a tender one, and you would do anything you could in kindness to this man. I am sorry for him, but our only remedy is to hold him to bail." Did you hear that observation made? A. I think there was some such observation.

Q. Did Judge Barnard say, "I am going to reduce the bail on the ground that nothing from nothing leaves nothing; and if he has got nothing, and could not earn anything in jail, it does no good to you. The trouble with him is, that he has got among gamblers, and got beaten"? A. The first part, I am very certain he did use the expression; the last part, I do not recollect that he said he "had got among gamblers." I do not remember that he said so; however, he may have said so. There was considerable conversation at the time, back and forth, in a rather pleasant way.

Q. Did you hear the counsel say, "If the bail is reduced, I ask that he be ordered to give us the security of a note, which he has promised it;" and that Judge Barnard replied, "Yes, he may give that, if it will do you any good. I know a good many men in New York who would give their note for a million of dollars if you would give them three cents on it"? A. I do not think any such remark was made. I know there was a discussion about a note, and Judge Barnard directed that they might have his note; that he would direct him to give his note. I recollect that, for I knew the man so well that it impressed me at the time that it would be good for nothing, for he owed me a good deal.

Q. Did you stay until the thing was terminated? A. Yes, sir. It only occupied a few minutes.

Q. Did you, as the parties were leaving, hear Judge Barnard call out to the plaintiff's counsel: "You can follow him about when he goes to these places to play faro (pronouncing it as spelt Pharaoh,) and you can catch him again?" A. No, sir; I did not hear it. I do not think any such remark was made. The only remark at all like it was "you can re-arrest him at any time you choose."

Q. In the course of this conversation, remarks, discussions or observations passing between the counsel and Judge Barnard, did you hear, or was there any merriment or laughter in Court? A. There may have been some little merriment when he used the expression, "Take nothing from nothing and nothing remains;" I think there was a little, but no loud laughter. It was the same merriment I had often seen in Chambers.

Q. Have you or have you not seen much more before this Committee during its proceedings?

Mr. PRINCE:

Do you propose to make that a matter of record?

Mr. PARSONS:

Mr. Andrews will laugh on the slightest provocation.

By Mr. STICKNEY:

Q. In the Goddard and Stanwood case, did you make yourself the application for a modification of the prior injunction to Judge Barnard? A. Yes, sir.

Q. Do you remember where you made that application to him? A. I really cannot tell. My impression is, I made it at Chambers; I will not be certain.

Q. You cannot be sure of it? A. I may have done it in his private room. I saw that the injunction order was granted by him *ex parte*, and I therefore supposed that he was the proper person to apply to.

Q. That was on the 26th? A. It was on the 26th.

Q. And on Saturday? A. Yes, sir; on Saturday.

Q. Are you sure that you made that application to Judge Barnard in the Court House? A. Yes, sir.

Q. Perfectly positive? A. Yes, sir; I am very sure.

Q. Do you know whether he was that day holding Chambers? A. I do not; I have not looked to see, nor do I recollect.

Q. What conversation did you have with Judge Barnard in relation to the case? A. My recollection is that I said to him: "Here is an injunction" (showing him a copy of the original injunction,) "and it is an *ex parte* injunction, and my client has \$1,000 laying in the hands of the Pacific Mail Steamship Company. I do not think anybody has got a claim upon it. This injunction stands in the way. Here is an affidavit of Mr. Stanwood of the fact, and I would like to get an *ex parte* order to modify that injunction." I think that is what I said. I don't think he read the papers, but he took my statement.

Q. This was an injunction which had been obtained on the application of the plaintiff against a judgment debtor? A. No, sir; against a non-resident. I think not a judgment debtor.

Q. Was it not against a judgment debtor on supplementary proceedings? A. Stanwood was not a judgment debtor.

Q. The judgment debtor was your client, was he not? A. I think he must have been, but it could not have been on supplementary proceedings, because Mr. Stanwood is a man of large wealth, and I do not think it could have assumed any such shape.

Q. Was there not a judgment in that suit against your client? A. Yes, sir.

Q. Had there not been an execution returned unsatisfied? A. Not that I know of, I am not certain. I cannot tell without looking at the papers. It was a judgment taken by default.

Q. Was not this original order of Judge Barnard's for the examination of the officers of the Pacific Mail Steamship Company in relation to money due from them to your client as a judgment debtor?

A. My recollection is that there was such an order, and there was also an injunction order.

Q. An injunction with this order for examination? A. I think so.

Q. Did you give any notice to the plaintiff of your application to set aside this injunction? A. I did not; it was entirely *ex parte*.

Q. Did you give any notice to the Pacific Mail Steamship Co.? A. No, sir. I went down—or at least Mr. Stanwood went down—to see them before he made this application, to see what was in the way of getting this money.

Q. This injunction perfectly protected the plaintiff, did it not, from any payment to your client of the debt to him? A. Yes, sir; but as I understood it, they did not pretend to claim that there was any lien on his money—on that \$1,000.

Q. Who did not? A. The plaintiff.

Q. The injunction hindered the Pacific Mail Steamship Company from paying it over, of course? A. It did.

Q. It protected the plaintiff somewhat, did it not? A. He had nothing to protect, because he had really no claim. The testimony of Mr. Lowrey shows that they at once consented to the Pacific Mail Steamship Company paying it over to us.

Q. Was there not a judgment against your client? A. I think I had opened the judgment.

Q. Are you sure? A. I think I did. I can give you accurate information by looking at the papers.

Q. Are you positive? A. I would not be positive. My recollection is that the first step I took in the case at all was to move to open the default. Mr. Hawkins was on the other side.

Q. Then did you consider there was any propriety in giving the plaintiff notice of the application that this injunction, which protected him so completely, should be set aside by the Court? A. I did not think there was any necessity for it. I knew that the plaintiff had no claim upon that money. It was money that had come in after the injunction had been granted. The injunction restrained the payment of some three or four thousand dollars, which was a separate thing from this. I do not think they had any claim, and I do not think they ever pretended to have any claim upon that thousand dollars.

Q. They had their injunction? A. Yes, sir; but that restrained the payment of the three or four thousand dollars which was involved in the suit.

Q. Was not the only difference between the \$3,000 which was due by the Pacific Mail Steamship Company, or which was at one time paid by them, and the \$1,000 or thereabouts, that the \$3,000 was liquidated and admitted to be due, and the \$1,000 was not? A. The \$1,000—

Q. Just answer the question. A. I think that was the difference in the first instance; but then Mr. Stanwood came on with that account liquidated—the \$1,000.

Q. But they were both debts from the same party to the same party, on account of the same matter? A. Yes, sir.

Q. And due at the same time? A. I think not—I think not due at the same time.

Q. Were they not due at the same time, although the full amount which was due was not then determined. A. That may be. The amount of this \$1,000 was not liquidated until about the time that I took the proceedings to modify this injunction.

Q. In your opinion, was it proper or was it regular practice that the plaintiff should have some notice of this application before the injunction should be set aside? A. I did not think so at the time.

Q. What do you think now? A. I think if I had to do it over again, I should give him notice.

Q. Was this proper and regular practice? A. I do not think it was, but it did not occur to me at that time.

Q. Do you remember any other points than those stated by you to Judge Barnard in your first conversation with him, whether any other matters were mentioned between you? A. No, sir; nothing at all that I recollect.

Q. Did it happen at that time that you owed Judge Barnard money that you remember? A. I never owed him money in my life.

Q. Was there not a money transaction between you, one way or the

other at that time? A. No, sir; I never had any money transactions with him.

Q. I did not mean to intimate anything wrong. A. That is a proper question. I never had his note and never gave him my note. I never gave him a check and I never had a check from him, and I never borrowed a dollar from him nor he from me.

Q. Was anything said on that day about any money to be loaned by one of you to the other? A. No, sir. Mr. Stanwood got his \$1,000, and started for the South. I never took any fee whatever, or anything else.

Q. Did you say anything to Judge Barnard about your owing a note to any one that day? A. No, sir.

Q. Or wanting to raise some money? A. No, sir.

Q. Have you never stated to any one that you told Judge Barnard at that time, or that it was mentioned at that time, that you wanted to raise some money? A. I do not think I had any notes outstanding; my credit is very poor. (Laughter.)

Q. How soon after in the course of the day did you see Judge Barnard? A. It must have been two or three hours.

Q. What passed between you then? A. Then we spoke about what had occurred in the intermediate time when Stanwood had been to him and made a complaint that these fellows had insulted the Judge and insulted him, and stated they would not pay any attention to Judge Barnard's order, and that then the Judge wrote this letter. I called the Judge's attention to the fact that this was not an order directing the paying of the money. He told Stanwood to go and get the letter back; that it was a mistake.

Q. Did Judge Barnard know Mr. Stanwood? A. I think he had known him for a long time. I think he knew him before I knew the Judge himself. Stanwood is a shipping merchant in Boston, and he has a large plantation in Alabama. He spent a good deal of time in New York.

Q. Have you any knowledge of Mr. Stanwood having been acquainted with Judge Barnard at that time? A. Yes, sir.

Q. Intimately? A. On friendly terms for a good many years.

Q. You knew at that time that there had been no order requiring the Pacific Mail Steamship Company to pay that money. A. I did.

Q. Did Judge Barnard read the order he signed that you first spoke of? A. No, sir. I said it was an order to modify the injunction, and stated to him the case, and he signed it.

Q. He signed it without reading it? A. Yes, sir. He took my statement of it.

Q. Without knowing what had been in his first order, he wrote this note which has been put in evidence? A. Without knowing; he was under the impression that he had signed for me an order directing the Pacific Mail Steamship Company to pay this money to Mr. Stanwood, and under that impression he wrote that letter.

Q. Being under that impression, without having read the order that he had signed, he had written this letter? A. Yes, sir. That is how

I understand it—as I recollect it. I know that he felt very nervous about it, and wanted Mr. Stanwood to bring that letter back.

Q. At that time, after you found the letter had been written? A. At that time—that very afternoon.

Q. After the letter had gone? A. Yes, sir.

Q. After Stanwood had come back from the Pacific Mail Steamship Company? A. Yes, sir.

Q. Suppose there had been an order requiring the Pacific Mail Steamship Company to pay the money, did you ever know in your life a Judge to write a letter of that kind, before or since? A. I cannot say that I ever did. I will tell you what occurred about it, if you would like.

Q. No, not at present; Judge Barnard's counsel may bring that out. A. The reason why the Judge told me—

Q. Do you know any precedents for a letter or paper of that kind in a suit? A. No; I have no information of any. I could not name any particular instance.

Q. Do you object to expressing your opinion on the point, whether that was a proper action for a Judge of the Supreme Court to do? A. I think that under the circumstances in which he did it, it would be a proper act. If you will allow me to tell you why.

Q. Go on. This was a Saturday afternoon. Mr. Stanwood, it seems, when he came back to the Judge, wanted an order to punish these people for contempt. He did not seem to understand his case very well. The Judge said, "This is Saturday, and I cannot issue an order of arrest against anybody on Saturday, and keep them shut up over Sunday, and I will write this note." This is what was said when we three were together. We had a conversation together after the thing occurred. He wrote this note for that purpose.

Q. You say Stanwood wished the parties to be punished for contempt? A. Yes, sir; Stanwood undoubtedly had a row with some one in the course of his interview with these people, for he was very much excited.

Q. He did not understand the case very well? A. No, sir.

Q. Did Judge Barnard understand it? A. He was under the impression that that order directed the payment of the money.

Q. Did he understand the case? A. I do not think he did; he took my statement of it.

Q. Had there been any proceedings charging anybody with contempt, at that time? A. No, sir.

Q. Was there, at that time, any order of any description, under the jurisdiction of which the Pacific Mail Steamship Company then was? A. There was not, excepting the injunction order.

Q. But the injunction order had then been set aside? A. Yes, sir.

Q. Then there was no order existing? A. No, sir; none that I know of.

Q. Do you remember whether the money was paid on Monday? A. I understood it was; I do not know.

Q. On this occasion you have stated, when the suit or hearing in the

case of Waddy against Egan was on, were you not a good portion of the time engaged in conversation with Judge Barnard? A. I think I spoke to him. I simply said to him, when I first entered, and this case had come up, that I wanted to see him for consultation, and asked him how soon he would see me. He said, "Take a seat and I will see how we get along with this Chamber business," and I sat down.

Q. What did you go there for? A. I went to talk to him with reference to these matters then being agitated.

Q. Did you not begin to talk to him about them at once? A. No, sir.

Q. Can you be sure? A. I am very sure.

Q. Did you not talk with him at intervals all the time that you were sitting by him on the Bench? A. Not while this case was going on.

Q. Can you be positive? A. I am not positive; I think I said to him, after he had disposed of this case, "I know this man very well that you have let out of jail; he is a nice man, and a brave soldier." But not until he had made his decision; that is my recollection of it.

Q. You cannot be sure that you heard, or that you now remember to have heard, everything that was said during the argument on that motion? A. I cannot remember all that was said; I do not pretend to. I did not take any memorandum of it at the time.

Q. Suppose a careful and accurate stenographer produced what he said was a *verbatim* report of the remarks made by the Judge and counsel at that time, and there was no reason whatever to question his integrity, would you undertake to state here that any particular part of his statement was untrue or incorrect? A. Well, I—

Q. Answer the question directly, and you can then explain? A. I would not—

Q. Answer, yes or no. A. I should say that he was as liable to mistake as anybody else.

Q. Answer the question? A. I say I would not, without qualification. I have known stenographers to be mistaken as well as other people. I never knew two of them to take things just alike—I never saw any two of them who did.

Q. You have stated that Judge Barnard did not, as far as you remember, use any remark of this kind: "If you had come to me I could have told you you would never get back a cent of the money?" A. I am quite sure he did not say that.

Q. I understand you to testify also, that you don't think he would make such a remark? A. I did not say that.

Q. How long have you been on terms of intimacy with Judge Barnard? A. I have known Judge Barnard since he was Recorder.

Q. Have you been quite intimate with him ever since? A. Not very intimate. I have been intimate with him for the last four or five years.

Q. Have you visited his house repeatedly? A. Frequently.

Q. Have you at any time seen any chairs in his dining-room marked with a monogram? A. Really, I cannot tell. I have never—

Q. Can't you tell? A. No, I can't. I have not been there to look or examine. I do not think his furniture all told in his dining-room is worth much. I would not give \$50 for the whole of it.

Q. Have you noticed the chairs in his library?

Judge BARNARD:

I have no library.

Q. Have you noticed at any time in his house, in any portion of it in which you have been, chairs marked with a monogram, G. G. B.? A. I have not. I have never noticed or taken any notice how the chairs were marked, or anything else.

Q. Have you no recollection on the point whatever? A. I have not. I generally go into his room up stairs, which is a bed room. He uses that as his library.

Q. Have you seen at any time arm chairs covered with morocco, having a monogram or device of any kind, in his house? A. That I cannot say; I don't remember.

Q. Have you no recollection? A. No; I have not. I never pay any attention to those things at all. I am not a judge of furniture, and did not examine it, and I don't know.

Q. You have no recollection on the subject whatever? A. No, sir; I have not. There may be monograms on all his furniture, for all that I know.

Q. Have you seen any arm chairs there? A. Yes, sir; a great many arm chairs, but I do not know how they are covered.

Q. In the dining room? A. I think there are some, but I do not know whether they are in the dining-room. I think there are some. I think there are arm chairs in his bed room, if I recollect.

Q. Are there chairs with a semi-circular back in any of the rooms? A. That I cannot remember, whether there are or not. I never made any inspection for the purpose of ascertaining. I suppose I know what you are driving at, but I really have not taken pains to examine.

Q. Could you say there are or not? A. I could not. I could not describe a single chair in his house, except a chair he sits in when he shaves. That is a chair I get into once in a while myself.

Q. Has it a monogram? A. I guess not. I think it is covered with cloth.

Judge BARNARD:

It is covered with carpet; it is a barber's chair.

CHARLES ROBINSON, a witness, being duly sworn, testifies:

By Mr. CURTIS:

Q. Where do you reside? A. I am here most of the time, but my residence is Fishkill Plains, Dutchess county, near Poughkeepsie.

Q. Do you know Judge Barnard? A. Yes, sir.

Q. How long have you known him? A. I have known him for perhaps ten years—well, I knew him when he was a boy, but had no particular acquaintance with him.

Q. Are you a friend of his? A. Yes, sir.

Q. Do you know anything about a check for \$3,000? Had you any occasion to furnish Judge Barnard with a check of that kind on the 14th day of July, 1871? if so, state all the circumstances connected with it. A. Yes, sir. I met Judge Barnard, and he said he wanted \$3,000.

Q. Where did you meet him? A. I met him in the street, between his house and Fifth avenue.

By Mr. TILDEN :

Q. What street is that? A. Twenty-first street.

By Mr. CURTIS :

Q. He said he wanted \$3,000. Did he say what he wanted it for? A. Yes, sir; he said he wanted some money to help somebody; I don't recollect who it was; I told him I could let him have it; I went and got it for him; I went to Mr. Gould, and he loaned me his check, and I gave it to him.

Q. You gave it to Judge Barnard? A. Yes, sir.

Q. Did Judge Barnard repay you? A. Yes, sir.

Q. Did he pay the money to you? A. He paid it to me, and I paid it to Mr. Gould.

Q. Is there anything more connected with it—was it anything more than a loan made by one friend to another, to be repaid? A. I think not.

Q. Did you know what use Judge Barnard wanted to make of the money—did he say? A. I think he said he wanted to borrow it for some one else?

Q. Did he not say that he wanted to assist his friend Coleman to make a payment? A. I think it was Jimmy Coleman that he wanted the money for.

Cross-examined by Mr. VAN COTT :

Q. Do you reside in this city? A. Yes, sir.

Q. How long have you lived here? A. For two years—about two years and a half I think it was; I go home every Saturday.

Q. What is your business here? A. I am interested in the National Stock Yard—President of the National Stock Yard in New Jersey.

Q. Have you been in the habit of visiting Judge Barnard? A. Yes, sir.

Q. Frequently? A. Yes, sir; quite frequently.

Q. Why did you not lend him this money from your own resources? A. I didn't have it at the time.

Q. Are you in the habit of commanding such a sum of money as \$3,000 as to be able to lend it readily on the application of a friend?

A. Any time.

Q. How long have you known Jay Gould? A. Two years; I guess it is more than two years since I came down here—two years and a half.

Q. You have known him since that time? A. Yes, sir.

Q. How often have you been in the habit of meeting with him? A. Every day.

Q. Have you had business transactions with him every day? A. Every day, except the days I was not here.

Q. Did you tell him what you wanted this money for? A. No, sir.

Q. Had you borrowed money of him before? A. I have.

Q. How often have you borrowed money of him before this occasion? A. Perhaps two or three times.

Q. In what amounts? A. Well, from \$1,000 to \$10,000.

Q. What security had you given him for it? A. Not any.

Q. What did you give him for this. A. None at all.

Q. You didn't mention Judge Barnard's name in connection with this transaction? A. No, sir.

Q. How often had you lent Judge Barnard money before? A. Well, perhaps two or three times.

Q. In what amounts? A. Sometimes \$100, sometimes \$50.—small amounts.

Q. Two or three times—is that all? A. That is all.

Q. Did you tell him, when he applied for this loan of \$3,000, that you had not the money? A. No, sir; I told him that I would get it for him, or would let him have it.

Q. Did you tell him why you didn't let him have it on the spot? A. No, sir.

Q. You promised to get it for him? A. I told him, I think, I would let him have it.

Q. For how long a time did you lend it? A. There was no time mentioned.

Q. Did you lend it for an indefinite time? A. Yes, sir.

Q. On the 14th day of July, 1871? A. Yes, sir.

Q. When was it repaid? A. I think it was, perhaps, two or three months afterwards.

Q. What did you understand Coleman wanted the money for? A. I think he had bought some land or lots, or something, and wanted to make a payment on them.

Q. What connection had the Erie Railway Company with these cattle yards of which you speak? A. Not any; it is a separate Company.

Q. What? A. It is separate entirely.

Q. Did you receive cattle from the trains of the Erie Railway Company? A. I receive all the cattle that come over the road, and guarantee the freight to the Railroad Company; I am responsible for the freight.

Q. That is to the Erie Railway Company? A. Yes, sir.

By Mr. TILDEN :

Q. Where are they situated? A. They are situated at Oak Cliff New Jersey.

Q. What are they called, the Erie Yards? A. It is called the National Stock Yard.

By Mr. VAN COTT :

Q. Is it an incorporated Company? A. Yes, sir.

Q. Who were the principal stockholders in it at that time? A. There were quite a number of shippers of stock.

Q. To what extent is Mr. Gould interested in it? A. I think Mr. Gould had only fifty shares of the stock.

Q. At \$100 a share? A. Yes, sir.

Q. How much had Mr. Fisk? A. I think the same amount.

Q. And Mr. Lane? A. I don't recollect how much Mr. Lane had.

Q. How much had you? A. I owned a good deal of stock.

Q. At that time? A. Yes, sir.

Q. How much? A. I don't know as I can tell exactly.

Q. About? A. Perhaps 800 shares.

Q. Were you on a salary? A. Yes, sir.

Q. What salary? A. I got \$100 a month.

By Mr. TILDEN :

Q. What is the capital stock of the Company? A. A million of dollars.

By Mr. VAN COTT :

Q. Do you remember whether you were appointed a Receiver of certain stock of the Erie Railway Company belonging to English owners, Heath and Raphael, and others? A. Yes, sir.

Q. Were you in this same business at that time? A. Yes, sir.

Q. Had you ever been a Receiver in any other case at that time? A. I think not.

Q. Who spoke to you about becoming Receiver there? A. Mr. Gould, I think, spoke to me.

Q. How long was it before you were appointed? A. Well, perhaps two or three days.

Q. Judge Barnard had never spoken to you about being appointed? A. No, sir.

Q. Do you remember who your security was on the appointment? A. I think Mr. Earl and Mr. Blanchard—I think it was.

Q. What business had you ever been engaged in before you were appointed Receiver, except the care of these cattle-yards? A. I am now manufacturing paper.

Q. Before that, what business had you been engaged in? A. Manufacturing paper and farming.

Q. Before you were appointed Receiver? A. Yes, sir.

Q. You dealt somewhat in horses? A. Yes, sir; I have raised a good many horses; I have a large stock now, that I am raising.

Q. How often have you been at Judge Barnard's house? A. I cannot tell, but quite often.

Q. How often have you been at the office of the Erie Railway Company? A. Every day when I was here; it is my place of business. I have a desk there; I have to be there every day.

Q. Had you a desk there when you were appointed Receiver? A. I used to do my writing at a desk there. I used to come to Mr. Blanchard's office, the General Freight Agent. There were a great many shippers that came there every day for information.

Q. Have you been in the dining-room—the Directors' room? A. Yes, sir.

Q. In the Opera House, on Twenty-third street? A. Yes, sir.

Q. Do you remember the kind of morocco with which the chairs were covered—did you observe that? A. I think I have.

Q. Do you remember the monogram upon those chairs there, E. R.? A. I think there is.

Q. Do you remember seeing chairs covered with the same kind of morocco at Judge Barnard's house, with the monogram G. G. B. on them? A. I never noticed them.

Q. Were they covered with morocco? A. His chairs?

Q. Yes, sir. A. I cannot say whether they were or not.

Q. Do you know what a monogram is? A. Yes, sir.

Q. Was there a monogram on his chairs? A. I cannot say.

Q. You have been frequently in his house? A. Yes, sir.

Q. And you cannot say whether his chairs are covered with morocco or whether they have a monogram on them. Will you say you cannot remember the resemblance of these chairs to those in the Erie Co.'s office? I wish you would charge your memory. A. I don't think I have seen any chairs of those?

Q. In what rooms in Judge Barnard's house have you been? A. Always in his room that he occupies himself

Q. Have you been only in that room? A. I have been in the parlor and in his sitting room.

Q. What is called the dining-room? A. Yes, sir.

Q. You have been in that? A. Yes, sir; I most always go right up to his room when I get there.

Q. Have you been in the habit of going there for a long time? A. For perhaps a year.

Q. Is that all? A. I don't think I went there much when I first came down here.

Q. Have you not been there before you were appointed Receiver? A. Yes, sir.

Q. Had you been there before the offices of the Erie Railway Co. were furnished in Twenty-third street? A. No, sir; I had not.

Q. You had never been there before that, you think? A. I think not.

Q. You are not able to state, therefore, what change took place in the furniture in Judge Barnard's house after the Erie Railway Co.'s room had been furnished on Twenty-third street? A. I never have seen any change in the furniture.

Q. Will you answer my question; are you able to state what changes took place from before the time the Erie Railway Co.'s offices were furnished and after they were furnished? A. No, sir.

Q. How was this \$3,000 you lent Judge Barnard repaid? A. Judge Barnard gave me \$3,000 in bills, and I gave them to Mr. Gould.

Q. Judge Barnard gave you \$3,000 in bills, and you gave the bills to Mr. Gould? A. Yes, sir.

Q. Then there was no check from Judge Barnard to you, or from Judge Barnard to Mr. Gould, in connection with this \$3,000 transaction? A. No, sir.

Q. I wish you would state as accurately as you can, when you returned the \$3,000 in bills? A. I think it must have been in November.

Q. 1871? A. Yes, sir. I know I made a mistake; I went to take the money back, and I had not enough.

Q. What was that? A. He gave me the money, and I didn't count the money, but I took it to Mr. Gould, and it was \$500 short. I thought I had lost it; I went back and told him that I had either lost \$500 or he had not given it to me; he said he had made a mistake; I went right back and gave the other \$500. Mr. Gould counted it over twice.

Q. Did Mr. Gould apply to you for a repayment before you made it?

A. No, sir; but I spoke to him several times.

Q. What did you tell him? A. I told him that I would hand him that money as soon as I could conveniently; he said he was in no hurry about it.

Q. He had no security from you? A. No, sir.

Q. He didn't know that Judge Barnard had it? A. No, sir.

Q. He didn't know that you were going back to Judge Barnard to get the missing \$500? A. No, sir.

By Mr. TILDEN:

Q. What kind of bank notes were they? A. \$500 bills.

By Mr. VAN COTT:

Q. You didn't tell him how the mistake had occurred, where the money was got from, or anything about it? A. I don't think I said anything. He counted it over and said, "Here is \$2,500." I said, "I thought that it was \$3,000." I thought I must have made a mistake.

Q. Did you tell him you would go and inquire of—? A. I don't think I told him about that, but I told him I would rectify it right away.

Q. You think he didn't know that you went to Judge Barnard for it? A. No, sir.

Q. On what previous occasions had you loaned Judge Barnard money? A. Sometimes I was in there when he was paying bills, and he would borrow \$100 or \$50 and hand it back again the next day. Very often, or sometimes, if I met him down town, he would say, let me have some money, and I always gave it to him.

Q. How long had this habit of lending him money been kept up?
A. Perhaps three, or four, or five times only.

Q. When did it begin? A. Perhaps a year and a half ago. He lent me some money once when I was going West, one evening; I told him that I hadn't money enough, and he said, I have got some, and will let you have it.

By Judge BARNARD:

Q. What is the size of your farm at Fishkill Plains? A. 260 acres.

Q. Is there any mortgage on it? A. Not a dollar.

Q. What would it sell for under the hammer? A. \$100 an acre.

Q. Do you owe anything, of any description, to anybody? A. To no one.

Q. Where is your paper mill located? A. At Manchester, three miles from Poughkeepsie.

Q. How many brick houses have you on that land? A. Seven.

Q. Any mortgage on that property? A. No, sir.

Q. Any mortgage on the mill? A. Not a dollar.

Q. What is that property worth? A. I don't know that I could tell.

Q. \$100,000? A. Yes, sir; \$300,000.

Q. What land do you own in Chicago, if any? A. I own 500 acres in one patch, three and a half miles from the city limits.

Q. What have you been offered an acre for that land? A. I was offered within six months \$350 an acre for 320 acres.

Q. Have you had an offer for any of the balance? A. I was offered \$20,000 for twenty acres of the balance.

Q. Have you any other land except that? A. Yes, sir; I have one lot 198 feet on Michigan avenue, running through to Indiana avenue.

Q. What is that worth? A. \$60 a foot.

Q. What do you mean by that? A. A front foot on Michigan avenue and a front foot on Indiana avenue.

Q. Have you any bank stock? A. I have not now.

Q. Have you any personal property outside your farm? A. Yes, sir; I have got some stock in the cattle yards at Chicago.

Q. What is the value of that? A. It is pretty hard to value it. You could not buy any of it. I gave par for it, 220 shares.

Q. What dividend does it pay you? A. Ten per cent.

Judge BARNARD:

That is all. I merely wanted to show that you do not depend upon trading horses for a living.

The WITNESS:

I have some rendering stock that pays me more than that.

Mr. STICKNEY:

I desire to put in evidence from the printed book the injunction of the suit of Stanton Courter against the Albany and Susquehanna Rail-

road Company, in which Messrs. Field & Shearman are plaintiffs attorneys, and which was granted on the 6th day of September, 1869, by Justice T. W. Clerke, of the city of New York.

GEORGE C. HALL, a witness, being called and duly sworn, testifies:

By Mr. STICKNEY:

Q. Your position is what? A. Purchasing Agent of the Erie Railway Company.

Q. How long have you been so? A. Since the Fall of 1868—October, I think it was.

Q. Do you remember the time when the furniture of the Erie Railway offices was furnished by Marcotte & Co.? A. Yes, sir.

Q. Do you remember at the same time that some arm chairs were furnished for the Erie Railway Company without any monogram or stamp upon them? A. Yes, sir; ordered so.

Q. Will you state what date, referring to your books or papers, those chairs were furnished, and state also what date the payment was made? A. I cannot tell you that; I can tell you the date that the chairs were credited on the books.

Q. Give us that date; you mean the books of the Erie Railway Company, is that it? A. The books in my office. They are not the Auditor's books, but they are the books from which we take transcripts monthly, and send to the Auditor's office. His books are copied from mine.

Q. Give us the date of the payment on the books? A. (After examining). I think I could give you the date, but I omitted to put it down. It was some time in November, 1869.

Q. The latter part, or the first part? A. I should say the last part of the month—as near as I could say, the 29th.

Q. Do you remember how many of them there were? A. There were ten.

Mr. CUETIS:

Of what?

Mr. STICKNEY:

The chairs.

A. There were ten chairs, and two revolving chairs.

Q. Arm chairs? A. Arm chairs.

Q. These had no monogram on them at the time they were delivered? A. I do not know whether they had or not. They were ordered without a monogram. I do not know that they ever were delivered.

Q. But they appear on your books. A. Credited to Marcotte & Co.

Q. In what accounts? A. In my regular accounts.

Q. State a little more fully what they are? A. In my ledger account, and in my journal. I keep a journal and ledger in my office, the same as though I conducted a mercantile business.

Q. In them appear the amounts that you vouched for to the disbursing office of the Erie Railway Company? A. Yes, sir.

Q. Have you ever seen these chairs in the Erie Railway office since? A. I Never saw them at all, to my knowledge.

Q. They were never delivered there? A. Not that I know of; I do not know as they were. The bill is certified to me by a man who was in my employ, or in the employ of the Company, Mr. Goodrich. The bill is certified to me as being correct, with his name on the bill. That was a voucher sufficient for me to put them through my books.

Q. What was the amount, as nearly as you can remember? A. Ten chairs at \$44 a piece, and the other chairs were perhaps \$60 apiece.

Q. Do you remember auditing—what do you call certifying? A. I call that vouchering.

Q. Do you remember auditing any subsequent charge for restamping these chairs? A. There was an item in the same bill of \$46 for re-covering; it does not say stamping.

Q. What date was that? A. The same date—all in the same bill.

Q. Did you ever hear where these chairs went? A. No, sir; I never did.

Q. From whom did you receive any instructions about them? A. From Col. Fisk.

Q. What were the instructions he gave you? A. The instructions were, that he wanted ten chairs made like the chairs in the Directors' room, only with arms to them, and with two revolving chairs, and made without monograms; when the bill came in, he passed the bill; they were certified as having been received by P. Goodrich, and then came to me, and I put them through my department in that manner.

Mr. CURTIS:

We have nothing further.

Mr. PARSONS:

We have nothing further to offer.

Mr. CURTIS:

I desire, before closing, to read a brief statement in behalf of Judge Barnard.

Mr. VAN COTT:

One moment. Of course, the Committee has supreme control of this proceeding. These charges that have been preferred are in writing, and were in the hands of Judge Barnard's counsel from a very early date. It would have been proper for them to answer them, admitting what they choose to admit, and denying what they choose to deny, leaving us then to pursue the case.

Mr. CURTIS:

What I am about to read is not an answer to the charges, and nothing of the nature of an answer, and when it is read, if there is any objection to inserting it on the record, the Committee may rule upon it.

Mr. PRINCE:

It will be read first, for information.

Mr. CURTIS reads the paper.

Mr. PRINCE:

The Committee will receive the document at the present time, and a full meeting of the Committee will be held in a day or two, and then action will be taken on what disposition to make of it.

Mr. CURTIS (to the Committee):

Do you leave town to-night?

Mr. PRINCE:

I, individually, leave town. It seems to me that the main portion of the document is something entirely outside of any duty on the part of this Committee, and should go to the Legislature, and not to the Committee.

Mr. CURTIS:

It is addressed to the discretion and ruling of the Committee, as to the form of proceeding that they may recommend. It may or may not ultimately reach the Legislature. It is not proper for us to send it to the Legislature. It is proper for us to address it to the Committee, simply for the consideration of the Committee.

Mr. PRINCE:

It seems to be based upon some remark understood to have been made by some member of the Committee. I do not know what it alludes to. The Constitution seems to me very on that point.

Mr. CURTIS:

It was only a suggestion made, and it was proper for Judge Barnard, as it seemed to me, in some formal manner to present to the Committee the objection which we entertain to that possible construction of the Constitution.

Mr. TILDEN:

We think that it comes properly before the Committee.

ROBERT H. STRAHAN, a member of the Committee, being called at his own request, after being duly sworn, testifies:

I was the attorney of John Foley, in the matter of a suit for an injunction against the Mayor, Aldermen and Commonalty of New York and others, in the proceeding referred to in the testimony of John H. Strahan, Mr. Wm. C. Barrett and others. I desire to simply say this under oath, that in the month of August, or rather prior to the first Monday of September, Mr. Wm. C. Barrett, in the presence of Mr. John H. Strahan and Mr. John Foley and myself, made this statement to us as his associates in that action: that he had, either on that morning

or the evening before, had a long conversation with Mr. Justice Sutherland, and that Mr. Justice Sutherland said to him that he preferred the application for an injunction to be made to some other Judge, and that he gave to him as the reason why he had such a desire the fact that he had been promised a re-nomination for Justice of the Supreme Court, by the Tammany Hall organization; that he had no means beyond his income as a Judge upon which to live; that if he failed to get a re-nomination, he could not resume his practice, being too old, and that he would be compelled to move out of the house in which he then lived, and reduce his style of living. After Mr. Barrett presented these facts as having come from Judge Sutherland, he submitted to us the question whether, in view of these things, and in view of the embarrassing position it would place Judge Sutherland to make this application to him, we had not better relieve him from the embarrassment, and make the application to some other Judge. Mr. Barrett not only took occasion to speak of this, but also to comment upon Judge Sutherland's declining to grant such a request. In view of the fact that Mr. Barrett swore that he did not make this statement, I desire now to solemnly swear that he made every word of that as coming from Judge Sutherland as his reasons for wishing us to go to some other Judge.

Mr. TILDEN :

You didn't hear Judge Sutherland make that statement ?

The WITNESS :

No, sir; I didn't hear Judge Sutherland. If Judge Sutherland did not say that, Mr. Wm. C. Barrett is the responsible party, in my opinion, for Judge Sutherland's action in the matter.

OAKES AMES, sworn and examined, and testified : (The counsel for the Bar Association were not present when this testimony was taken).

I would like to make a statement in relation to the change of the office of the Union Pacific Railroad Company from New York to Boston. I have been informed that Clark Bell stated that the office was removed from New York to Boston, and that it had been contemplated for some time, and it was not moved in consequence of those proceedings in Court; that is what I have been told appeared in the newspapers. Being here in New York during the sitting of the Committee, I came here to-day, and I was informed that this Committee was in session, and I was called upon to state what I knew in relation to the removal of the offices from New York to Boston.

By Mr. PRINCE :

Q. What position do you hold in that Company ? A. Well, I was a stockholder at that time; I was not a Director at that time.

Q. You are a Director now ? A. Yes, sir.

By Mr. TILDEN :

Q. You were a very large stockholder at that time? A. Yes, sir; one of the largest, I think.

Q. Your brother was one of the largest stockholders, also? A. Yes, sir; and we are yet.

Q. State what were the motives inducing the Company to remove its offices from this city to Boston? A. We had injunctions served upon us to prevent the election of officers, and suits brought against us, as we thought, to put us into the hands of a Receiver, and had to pay sums of money to keep out of those scrapes. We found that we could not carry on our business in New York without being driven into insolvency or into the hands of a Receiver; I used my influence at Washington; I was a member of Congress at that time; I went there to get a bill passed to remove our offices from New York. In that bill we were authorized to have the offices either in New York, Philadelphia, Washington or Boston, and I don't know but some other point. We got the law passed, with a great deal of opposition from James Fisk or his agents; we moved our offices to Boston; we were forced to do it, against, as we considered, the interest of the Company, because we considered New York the most commanding place, and we wanted large sums of money, and desired to operate largely, and we could do it better here than in Boston, but the Courts and Judiciary were in such positions that we could not stay here.

By Mr. PRINCE:

Q. In speaking of the Courts and Judiciary of this city whose action had been such as to induce the Company to remove its office from this city, do you refer to any particular Court? A. Well, Judge Barnard, I think, issued most of the injunctions—Barnard and Cardozo; I believe they got one injunction from Judge McCunn.

By Mr. TILDEN:

Q. That was two years before? A. Yes; but we were followed with those injunctions for two or three years; we couldn't have an election of officers; we were obliged to hold over; several of our Directors were arrested for contempt of Judge Barnard's Court, my brother among the rest, who was not in the room at all; he was in a room outside.

Q. Mr. Ames, when you say you could not remain in the city of New York, you mean you could not remain without being subject to the institution of suits in the State Court, in which orders, such as you complain of, were granted? A. Yes, sir; then we got a law passed (if you recollect), authorizing us to take those things into the United States Court, and the Judges here refused to let it go into the United States Court, and kept us in their Courts.

Q. You did at New York? A. Yes, sir; but then it was a long while before we were able to do it; you know all about that, I think.

Q. You did at New York successfully transfer your litigation to the Federal Court? A. Yes, sir.

Adjourned.

In the matter of the charges preferred against Hon. Albert Cardozo. Before the Judiciary Committee of the Assembly.

APRIL 1st, 1871.

Present : Messrs. TILDEN and STRAHAN.

ROBERT YELVERTON, sworn. Examined by Mr. STICKNEY.

Q. Have you examined the original books and papers in the account of Gratz Nathan, at the National Mechanics' Banking Association, and the account of Judge Cardozo, in the Mechanics' Bank? A. Yes, sir.

Mr. OWEN :

Is this new ?

Mr. STICKNEY :

There are some new points.

Mr. OWEN :

Those are the same accounts before testified to ?

Mr. STICKNEY :

They are the same accounts.

Q. Have you examined also the books and the papers of those two banks in reference to the fact of whether any checks of Gratz Nathan, on the National Mechanics' Banking Association, have passed to the credit of Judge Cardozo, in the Mechanics' Bank? A. I have, sir.

Q. Between the 1st of January, 1868, and the 5th of February, 1872, have you found, in the books of either of those banks, any check of Mr. Nathan's which has gone to the credit of Judge Cardozo? A. No, sir; I have not.

Q. I refer to any check passing through the Clearing-house, and deposited as a check, and appearing in Judge Cardozo's account? A. I have not.

Q. Do you find any similarity of date and amount between certain checks of Gratz Nathan, drawn on the Mechanics' Banking Association, that have been paid in bills, and deposits of bills, by Judge Cardozo, in the Mechanics' Bank, in his account? A. I do, sir.

Mr. FULLERTON :

This has all been gone through with.

Mr. TILDEN :

This is, substantially, what has been testified before.

Mr. STICKNEY :

We mean to put in a schedule of these ; there are, too, some points in the testimony that were not mentioned before.

Mr. TILDEN :

Confine yourself, as far as you can, to what is new.

Mr. STICKNEY :

We have had Mr. Yelverton draw up a complete statement, containing the items which he testified to before, and also some other items, presenting the whole of them in one schedule.

Mr. TILDEN :

Is that all founded on documents and papers already in ?

Mr. STICKNEY :

It is all founded on documents and papers already in.

Mr. TILDEN :

This is an exhibit.

Mr. STICKNEY :

It is an exhibit we wish to put in, showing items carried from the accounts of both of those gentlemen.

Mr. TILDEN :

All of which items are already in the case.

Mr. PARSONS :

No, not all the items already in the case, but the paper from which this table is prepared is already in the case.

Mr. STICKNEY :

It is a mere schedule collating items.

Mr. OWEN :

It is an argument.

Mr. STICKNEY :

No ; I think it is not.

Mr. TILDEN :

I think it would be proper to admit it under the testimony of an expert.

Q. Refer to the paper, which is now presented to you, and state what the left hand column of the three columns therein contained consists of. A. Memorandum of certain checks of Gratz Nathan, drawn on the Mechanics' Banking Association, which were paid in bills by that bank.

Q. State what the second column consists of. A. Memorandum of certain deposits in bills, in the Mechanics' Bank, by Albert Cardozo.

Q. And are those deposits in bills deposits between which and certain checks of Mr. Nathan you trace any connection? A. Yes, sir; they are.

Q. Will you state what the third column on that paper contains? A. Memorandum of certain deposits in bills, in the Mechanics' Bank, by Albert Cardozo, which are not identified with payment in bills by Gratz Nathan.

Q. With payments of Gratz Nathans checks? A. Yes, sir.

Q. And the second and third columns on that paper, do they contain all the deposits of bills in Judge Cardozo's account in the Mechanics' Bank? A. Yes, sir; they do.

Mr. STICKNEY:

We offer that schedule in evidence.

Mr. FULLERTON:

Is this the one that has been published in the newspapers?

Mr. STICKNEY:

I don't know; perhaps, if you examine it, you can tell.

Mr. FULLERTON:

I cannot cross-examine him in regard to this without having time to examine it.

Mr. STICKNEY:

We cannot object to that.

Mr. TILDEN:

Those I understand are selections from the accounts already in evidence.

Mr. STICKNEY:

From the accounts already in evidence, and there are no items there that do not already appear in the accounts already in as Exhibits.

(Paper marked "April 1st, 1872, S. J. T., Judge Cardozo, Charge 5.")

Q. From what papers have you prepared this paper which is now shown you and put in evidence? A. From the account of Judge Cardozo in the Mechanics' Bank, and the account of Gratz Nathan in the Mechanics' Banking Association, which were handed me by those banks.

Q. And which have been testified to by you before? A. Yes, sir; in relation to which I have been examined.

Q. The dates that appear on that paper and the amounts, are they the dates and amounts appearing in the account? Where

did you get those dates? A. From the accounts of Gratz Nathan with the Mechanics' Banking Association, and Judge Cardozo with the Mechanics' Bank, as furnished by those banks.

Q. And which have been put in evidence before, and testified to by you? A. Yes, sir.

Q. And the dates of the debits to Gratz Nathan, are they the dates of the checks or the dates of the payments by the bank of the checks? A. They are the dates of the payment by the bank.

Q. And the dates taken from Judge Cardozo's account, what dates are those? A. Those are the dates of deposits.

By Mr. TILDEN :

Q. Do you say those contain all the deposits of bills? Those two last columns do contain all the deposits in bills by Judge Cardozo in the Mechanics' Bank during the period the account covers.

Q. Is that the same account that has been published in the newspapers? A. I saw that, but made no comparison with it.

By Mr. STICKNEY :

Q. Will you refer, on this paper which has been last put in evidence, to the item of a check of Mr. Nathan, paid on June 14th, 1870, of \$2,850, and the corresponding two items on July 15th, 1870, of deposits by Judge Cardozo, one of \$800 in the Mechanics' Bank, and one of \$2,000 in the United States Trust Company. State what you know as to those two deposits of \$800 and of \$2,000, where, how and when each was made? A. Gratz Nathan's check for \$2,850, was paid on the 14th of June, 1870, by the Mechanics' Banking Association in bills. On June 15th, 1870, Judge Cardozo deposited in the Mechanics' Bank \$800 in bills. He also, on the same day, made a deposit in the United States Trust Company of \$2,000, which was not drawn from the Mechanics' Bank. What the nature of that deposit consisted of, or whether it consisted of bills or checks, I was unable to ascertain.

By Mr. TILDEN :

Q. Why was that? A. The Trust Company kept no record of what the deposits made there consisted of. They had no means of ascertaining, so they tell me.

Q. You were unable to show? A. Yes, sir.

By Mr. STICKNEY :

During the first period, from January, 1868, to the month of February, 1872, what checks do you find of Judge Cardozo's that have passed from him to Gratz Nathan's credit? A. I do not find any.

Q. And how do you ascertain that, or what examination have

you made that shows those facts? A. I have made an examination of all checks of Judge Cardozo of amounts above a thousand dollars which were not drawn from the United States Trust Company, and which I have traced.

Q. Which were drawn on what bank? A. On the Mechanics' Bank.

Q. And have you traced them all? A. Yes, sir; all above a thousand dollars. I have not traced them all to their source, but I have traced them in a manner which would indicate they were not paid to Gratz Nathan, or deposited by him.

Q. Have any of them gone to the National Mechanics' Banking Association? A. No, sir; the National Mechanics' Banking Association put upon their deposit slips the number of the bank upon which the check is drawn; that is, deposited.

By Mr. TILDEN:

Q. What do you mean by "deposit slips?" A. The deposit ticket put in with the deposit by the depositor, and by an examination of those tickets, wherever the number 4 was on it I referred to Gratz Nathan's account to see if any such check was there.

Q. What is No. 4? A. The Clearing-house number of Mechanics' Bank. I referred to Judge Cardozo's account to see if he had drawn any such check, and when the number was not put down I referred, in all cases, especially to Judge Cardozo's debit account, to see if he had drawn a check for that amount, or anything like it.

By Mr. STICKNEY:

Q. To see if he had drawn a check for what amount? A. The amount that was put on the deposit check of Gratz Nathan's, marked No. 4. If it was not numbered No. 4, I referred to it, and if it was numbered No. 4, I referred to it.

Q. No. 4 is the Clearing-house number of what bank? A. The Mechanics' Bank.

Q. You say that on all of the deposit tickets in the Mechanics' Banking Association there is written the clearing number of the bank on which the deposited check is drawn? A. Yes, sir.

By Mr. FULLERTON:

Q. Is that the rule of that bank? A. Yes, sir.

By Mr. PARSONS:

Q. Of all the banks, is it not? A. No, sir; not of all.

By Mr. TILDEN:

Q. It is a general rule of the banks? A. No, sir; it is not.

By Mr. FULLERTON:

Q. Did the depositor put it on? A. No, sir; the receiving teller.

By Mr. STICKNEY :

Q. Did you make any such examination as to checks under a thousand dollars? A. Yes, sir; as to how they were paid.

Q. Did you find any checks of Judge Cardozo's of less than a thousand dollars, which went to Grätz Nathan's account in the Mechanics' Banking Association? A. I did not.

Q. Was your examination of the same kind as the examination in reference to checks of a larger amount, which you have just mentioned? A. I didn't trace those small checks.

Q. What do you mean by you didn't trace them? A. I didn't follow them out to see upon what day or by whom they were deposited.

Q. The individual person? A. Yes, sir.

Q. But you did trace to what bank they went? A. Yes, sir.

Q. You mean to say you found none of them went to the bank, in which Mr. Nathan kept his account? A. I do, especially those of a thousand dollars or over.

Q. But we are talking of those under a thousand dollars? A. Those under a thousand dollars we did not trace, because we had the deposit tickets to prove that.

Q. To prove what? A. To prove that they were not checks from the Mechanics' Bank.

Q. You mean the deposit tickets of Mr. Nathan? A. Yes, sir.

Q. During the same period, from the 1st of January, 1868, how many checks of Judge Cardozo, do you find that were paid in bills by the Mechanics' Bank? A. The number of the checks?

Q. Yes? A. Forty-four, I think.

Q. What is the total amount of the sums for which they were drawn? A. About \$5,600—a few dollars over that.

Q. What is the largest amount for which any one of those checks was drawn? A. \$250.

Q. How many were drawn for that amount? A. For that exact amount?

Q. Yes? A. Perhaps four or five; I would not say positively.

Q. What was the amount of most of them? A. They were mostly for \$100 or under.

Mr. FULLERTON :

That is all in evidence.

Mr. OWEN :

And all appears by that statement.

Mr. STICKNEY :

No; not that. Those are checks by Judge Cardozo, drawn on the Mechanics' Bank.

Mr. FULLERTON :

It is introduced in evidence, and marked as an Exhibit.

By Mr. STICKNEY.

Q. About how many of those checks of Judge Cardozo's, that were paid in bills, were for the exact amount of \$100? A. Thirty-one.

Q. Have you examined certain deposits made by Gratz Nathan, on July 11th and 12th, 1870? A. I have, sir.

Q. Take the deposit of the 11th. What was the amount of the whole deposit? A. The amount of the whole deposit was \$11,193.96.

Q. Of what items did it consist? A. Bills, \$163.96; check of \$541.50; check, \$278.50; check of \$1,500; check of \$210; check of \$6,500; check of \$2,000.

Q. Did you examine to see whether any of those checks came from the Mechanics' Bank? A. I did.

Q. Did any of them come from there? A. There did not.

Q. Where did you find that those checks did come from—what banks, and what amounts, as far as you were able to ascertain? A. One of the items in the deposit of June 11th, 1870, was a check on the Bank of New York for \$1,500.

Q. Whose check? A. It was a check on the Bank of New York for \$1,500. There were three debits for checks of this amount on July 12th, in the Bank of New York. I applied to all the parties so debited, except a firm in Milwaukee, all of whom gave me the purpose to which their checks were applied for payments of drafts.

Mr. OWEN:

That won't hardly do.

Mr. TILDEN:

That is hearsay, I suppose. At the same time, I suppose we take testimony here as they took depositions in Chancery; that is to say, we have to take whatever the parties require.

Mr. FULLERTON:

I think not, for there the party interested appeared before the Master in Chancery as to what should be expurgated; but when it passes from this room, we never see it again.

By Mr. STICKNEY:

Q. See whether you made an examination as to the point whether any of those checks of that day's deposit were on the Mechanics' Bank? A. I did. There were not.

Q. State what was the total amount of the deposit on the 12th of July, 1870? A. \$7,882.41.

Q. Of what items was that composed? A. Check for \$5,165.50; check for \$1,612.34; check for \$565; check for \$270; check for \$244.57; check for \$25.

Q. Did you examine to see what banks those checks were on?
A. There were none of them on the Mechanics' Bank.

Q. Have you examined, or have you compared the dates and amounts of the checks of Judge Cardozo which have been paid in bills, with deposits of bills by Gratz Nathan? A. I examined with reference to them.

Q. Do you find any similarity in dates or amounts between such deposits and payments? A. Yes, sir; in two cases.

Q. What were those two payments? A. They were \$100 each; I don't remember the dates.

By Mr. TILDEN:

Q. Can you not give the dates? A. No, sir; I am not prepared to say.

By Mr. STICKNEY:

Q. Did you find any similarity in any other cases? A. No, sir.

By Mr. TILDEN:

Q. Can you give the year in which they were? A. I don't recollect the year nor the date. I know there were only those two cases.

Q. Do I understand you to say that you find nothing that appears to be a payment from Judge Cardozo to Gratz Nathan in the accounts—nothing that is indicated? A. Nothing, except the similarity of deposits in the two cases I have mentioned.

Q. Two cases of what amount? A. \$100 each.

Q. Was there no other payment in bills made by Judge Cardozo that are deposited in Gratz Nathan's account? A. No, sir; that is, having a similarity of date that we could trace any similarity to correspond in date or amount.

Q. And you say there are no checks drawn by Judge Cardozo that are deposited in the account of Gratz Nathan? A. I do.

By Mr. FULLERTON:

Q. In whose handwriting is this Exhibit introduced to-day?
A. It is in my handwriting.

Q. The whole of it? A. Yes, sir.

Q. I see you state, as a heading here to one of the columns: "Memorandum of certain deposits in bills in the Mechanics' Bank, of Albert Cardozo, which are not directly identified with payments in bills by Gratz Nathan?" A. Yes, sir.

Q. Do you mean to be understood that those deposits referred to in that heading are indirectly identified with payments in bills by Gratz Nathan? A. That would be an inference that any one might draw for himself. I could trace no identification.

Q. Why did you use the words: "Not directly identified?"
A. There were some bills deposited in Judge Cardozo's account that are not accounted for.

Q. Is there any identification, directly or indirectly? A. I don't know that there is.

Q. Have you been able to discover any? A. Only one, that is on that account.

Q. I am talking of this third column. A. No other than what is there.

Q. Look at the heading again: "Memorandum of certain deposits in bills in the Mechanics' Bank by Albert Cardozo, which are not directly identified with payments in bills by Gratz Nathan." Are they identified at all, directly or indirectly? A. I don't know that they are.

Mr. FULLERTON:

Then I suggest, that the word "directly" should be struck out. I object to the reception of the document with that word in it

Mr. PARSONS:

Let that word be struck out.

(The word "directly," at the beginning of the third column, was erased by order of the Committee.)

By Mr. STICKNEY:

Q. In the third column of this paper is a deposit on the 23d day of February, 1870, of \$1,450 in bills. Have you made any examination to see where that came from; if so, state what you ascertained? A. I made an examination of the account of Terence Farley, in the National Bank of New York.

Q. What did you find as to this deposit? A. I found that a check of Terence Farley's was paid by that bank in bills, on the 21st of February, 1870.

Q. Of what amount? A. Of \$1,450.

Q. The same amount as this deposit? A. Yes, sir.

Q. And the 22d of February—was that a holiday? A. Yes, sir.

By Mr. FULLERTON:

Q. You are not prepared to say that the same bills drawn by Terence Farley were deposited by Judge Cardozo? A. I can only state what I have already stated.

Q. Did you look to see whether any other gentlemen in New York deposited a check of \$1,450 on that same day? A. As far as I examined.

Q. You did not examine all the accounts of all the gentlemen in New York? A. No, sir.

Adjourned to Thursday, April 4th, 1872, at 10 o'clock A. M.

In the matter of the charges preferred against Hon. Albert Cardozo, before the Judiciary Committee of the Assembly.

NEW YORK, April 4, 1872.

Present—Messrs. PRINCE, TILDEN and FLAMMER:

TERENCE FARLEY, a witness, being duly sworn, testifies:

By Mr. FULLERTON:

Q. It has been stated that you drew in bills about \$1,450 on the 25th of February, 1870. Do you recollect drawing such an amount from the Broadway Bank? A. I made out a check for that amount.

Q. Have you the check with you? A. Yes sir; (the witness produces a check).

Q. Is the check now produced the one upon which the bills spoken of were drawn? A. That is the only one I recollect of drawing on that pay.

Mr. Fullerton reads the check in evidence, in the words following:

NEW YORK, Feb. 21, 1870.

The National Broadway Bank: Pay to the order of Terence Farley fourteen hundred and fifty dollars.
\$1,450.

TERENCE FARLEY.

(Endorsed "All right, Terence Farley," and below, in pencil, the word "McCaffrey.")

Q. State the history of that check, what money was drawn, and what was done with it? A. I have been building a great many houses, and doing a great deal of work in excavating on some property belonging to myself, and I had a pay-roll every two weeks by which to pay the men that worked for me and my brother. I generally drew the money every pay-day to pay my men. The pay-roll was made out—it was always made out for the week ending Saturday, and the men were paid off on Monday evening at my office. I generally drew out the amount from some bank—generally out of the Broadway. I drew that money out of the Broadway to pay my men, and for that purpose. There is a gentleman, Mr. McCaffrey, who drew the money out and brought it up to my house.

By Mr. TILDEN:

Q. When was that pencil memorandum made on the back? A. I think that was made on the back by one of the bank officers.

Q. Made before the check was returned to you? A. When I saw this in the paper about my drawing out \$1,450—I saw it in the *Times*—I went to looking over my checks at home, and I came to see Judge Cardozo, and ask him what it meant, knowing that I never gave the gentleman a dollar in my life, and I told him I thought I could show what I did with the money.

By Mr. FULLERTON :

Q. Was the money drawn upon this check, now produced and read in evidence, paid to your men? A. There was thirteen hundred and some odd dollars paid to my men; \$50 I sent to my father.

Q. How do you recollect that fact? A. I remember it in this way: that was my pay day, and it took very nearly \$1,400 to pay my men, and I sent \$50 to my father, which I have here in my memorandum book.

Q. Have you the memorandum book with you? A. Yes, sir.

Q. Let me see it, if you please. (The witness here produces a book to counsel).

By Mr. TILDEN :

Q. Where does your father live? A. He lives between Newark and Orange. He has lived there near forty years. He is ninety-four years of age. I support him. You will find it there somewhere (in the memorandum book.)

By Mr. FULLERTON :

Q. Turn to your diary, under the date of February, 1870, to Monday, the 21st day, and I ask you whether that entry was made on that day? A. It was made on that day.

Q. That entry therein made was true, was it? A. Yes, sir.

Mr. FULLERTON :

I read the memorandum in evidence. Under the head of Monday, February 21, is this: "Pay men \$1,450, Chs.," which I suppose means checks "on B. W. N. B."

Q. Do these initials mean Broadway National Bank? A. Yes, sir.

Mr. FULLERTON :

There is also the entry, "Sent my father \$50."

The WITNESS :

I have, if necessary, the pay-roll to show that.

Q. Have you it with you? A. I would have brought it if I had thought it was necessary; I have the pay-rolls for the last twenty years.

Q. How many men had you in your employ in 1870? A. They varied. Some days we might have a hundred, and some days not so many, and some days more, according to—I could not say; but the pay-roll would tell.

Q. Did any part of the money, drawn on the 21st of February, 1870, in bills, go to Judge Cardozo? A. No, indeed, sir.

Q. Directly or indirectly? A. I never gave him a dollar in my life, directly or indirectly.

Q. Have you been in the habit, in your life, of drawing bills

from checks? A. Yes, sir; I will give you some checks that will show it, (producing a package of cancelled checks.) Some there are as high as \$6,000.

By Mr. TILDEN :

Suppose you ask him whether this money was paid to others than the men who were employed?

Q. Was this amount paid to any other individuals than the men you were employing? A. Perhaps there may have been a few dollars left.

Q. After paying the men? A. After paying the men. The pay-roll amounted to more than \$1,300. I always had to carry some money in my pocket. About \$1,450 was the sum I drew out. The check will show.

By Mr. TILDEN :

Q. \$1,300 was paid to your men? A. I could not swear what I did with the whole \$1,400; I know I sent \$50 to my father from my memorandum. I never supposed I would have to look over it again, and I had to look over a great many papers to find my check.

By Mr. STICKNEY :

Q. How often have you been in the habit of drawing bills from the bank to pay your men? A. Sometimes every week, and sometimes semi-monthly.

Q. Why did you not pay in checks? A. Some, perhaps, would be paid only \$2 or \$3; some \$5, some \$20. The men I paid fourteen shillings a day would not be paid as much as those I paid \$3 a day to. It would be according to what they earned. For instance, blasting work in the rock, where I was grading in Second avenue, I paid as high as \$3. Men who could only work with a shovel I paid fourteen shillings to, and to men who could strike a hammer on a drill I paid eighteen or twenty shillings.

Q. Did the men prefer to have bills to checks? A. I never paid checks.

Q. Will those checks which you have produced show whether, in those instances, you have drawn bills? A. All of these bills were drawn at different times.

By Mr. TILDEN :

Q. You made them payable to your own order? A. Yes, sir; there is one of a thousand dollars (showing a check). Sometimes in transactions of real estate I pay the money. They might want a check certified, and I take my money with me.

By Mr. FULLERTON :

Q. Did you ever pay any money to Judge Cardozo, directly or indirectly? A. I never did in my life.

Q. Did any person, to your knowledge or with your consent directly or indirectly, ever pay or give any money to Judge Cardozo on your account, or for any purpose connected with you?
A. Repeat that.

Q. Did any person, to your knowledge or with your consent, directly or indirectly, ever pay or give any money to Judge Cardozo on your account, or for any purpose connected with you?
A. Never, to my knowledge; I am positive about that.

By Mr. VAN COTT:

Q. How long have you known Judge Cardozo? A. Since 1858.

Q. How long was that before he was elected to the Bench of the Supreme Court? A. That was when he was—

Q. One of the Judges of the Court of Common Pleas? A. Before that.

Q. Before he became a Judge of the Court of Common Pleas?
A. Yes, sir.

Q. How long before? A. I could not swear positively how long before. I knew him in 1858—I am positive of that. I was a candidate for a position in the Ward where I lived, and he was introduced to me by Major Baldwin and, I think, Judge Pierrepont.

Q. You were at that time a candidate for what office? A. I do not know as I was exactly a candidate when I became acquainted with him. I think that was before I became a candidate.

Q. Was it not about the time when he became a candidate for the Bench of the Court of Common Pleas? A. I don't think his name was ever mentioned for any office at that time.

Q. Do you remember for what purpose he was introduced at that time? A. I think I do.

Q. Where was it, and what was the occasion of the introduction? A. I think I was taking a walk on Sunday with my son, and I met Major Baldwin and Judge Pierrepont, whom I knew. I think Judge Pierrepont was about that time resigning the Judgeship.

Q. Of the Superior Court? A. I do not know what Court; I think he was about resigning the Judgeship, or had resigned, I could not say positively. A conversation came up, and Major Baldwin introduced me to Judge Cardozo. We met accidentally; we met afterwards frequently, and I had the Judge to attend to some little matters of law business, and to give me advice on some matters—his office was on Wall street—for which I offered to pay him. He said "it was trifling" and "never mind."

Q. Have you finished what you wish to say? A. Except you wish to ask me something more. That was the commencement of my acquaintance with him.

Q. Do you remember how soon after you supported him for the Common Pleas? A. I forget now in regard to the date.

Q. Was there some talk, when you first became acquainted, about his taking Judge Pierrepont's place in the Superior Court? A. No, sir.

Q. You first supported him for the Common Pleas? A. Yes, sir; I was one who supported him.

Q. You afterwards supported him actively for the Supreme Court? A. Yes, sir; after he was nominated.

Q. Do you remember how many times he has appointed you Receiver? A. I think I could state if I were to figure up.

Q. How many times, according to your best recollection? A. I would not swear positively, but I should think five times—it may be six.

Q. Since he has been a Judge of the Supreme Court? A. Yes, sir.

Q. What business were you brought up to? A. I was, when a boy, working at the hatter's trade for a while in Newark, some thirty odd years ago. I was with Mr. Rankin.

Q. After that? A. Times got dull, and I went to attending a grocery store in Newark. Then I kept a grocery in New York, and then I went into building and contracting.

Q. A grocery and liquor store in both places? A. No, sir.

Q. Nothing but groceries? A. Groceries and wines—whole-sale.

Q. How many years have you been Alderman? A. I was elected the first time, a School Officer, then a School Commissioner then three terms Alderman. I declined a nomination for the fourth. Then after two years I received a nomination both from the Democrats and Republicans, and was elected after declining it, but I was forced to accept it, and did accept it.

Q. You have been an Alderman most of the time since Judge Cardozo has been a Judge of the Supreme Court, have you not? A. No, sir.

Q. Not most of the time? A. No, sir. The last term, I think, I was Alderman for one year.

Q. Your main business for some years past has been that of a contractor for city work, grading and paving? A. No, sir. I haven't had a contract since I was elected School Commissioner.

Q. You have never done any work of grading and paving streets since you have been in a municipal office? A. No, sir.

Q. Nor interested in any contract that any one else had for grading and paving, or sewerage? A. Except to loan money.

Q. To the contractors? A. I have loaned money to my brother.

Q. Who had contracts? A. Who had contracts, and who paid me seven per cent. for it.

Q. Your brother has had contracts for grading and paving

the streets most of the time since you have been in office? A. I believe he has had two or three, but not for paving.

Q. For what? A. Grading; he never did any paving.

Q. How about sewers? A. I do not think he had any sewers while I was in office; I do not think he had.

Q. What has been your principal business during the last few years since Judge Cardozo has been on the Bench of the Supreme Court? A. When I first got acquainted with Judge Cardozo I was building houses, and I am still in real estate.

Q. Was that your principal business then? A. Yes, sir.

Q. Has it been ever since? A. Yes, sir; dealing in real estate and building houses.

Q. Has he dealt in real estate to any extent? A. The Judge?

Q. Yes, sir. A. He might have, for all I know, but I do not think he has.

Q. You do not know whether he has? A. I did advise the Judge several times to go into some operations that I thought would be profitable to him, but he has always—

Q. You don't know whether he did? A. I do.

Q. Did he? A. I was just going to explain.

Q. Excuse me for interrupting you? A. I did advise him several times to go in; I thought there was a good opening about eight months ago; I showed him a parcel of lots that were offered to me for sale, and I advised him, if possible, to secure an interest in those lots; he said he didn't care about having anything to do with real estate; that he had not much money, but that he had \$5,000, and that I might put that in; I think that was it; I took the deed in my own name, and he has an interest of \$5,000 in the lots.

Q. What was the amount of the purchase money in the property? A. The amount of the purchase money was \$57,000.

Q. Whom did the title come from? A. It came from Mr. Shaw and Mr. Waterbury, merchants.

Q. What improvements were going on at the time near the property? A. There was no improvements—no particular improvements; it was near the Central Park and the Zoological Gardens; \$10,000 was to be paid in cash; the Judge told me that he would take an interest of \$5,000 in the lots; I put \$5,000 of my own with it, and took the deed in my own name.

Q. How did he pay you the \$5,000? A. When I paid the first instalment; on signing the contract he gave me part of what I was paying.

Q. What was the date of that? A. I cannot tell now.

Q. As near as you can? A. It was last Fall.

Q. The Fall of 1871? A. Yes, sir.

Q. Will you not try to fix the month? A. I could if I—

Q. What was the amount of the first payment he made? A. From recollection, I could not swear positively, but I can bring the amount and date.

Q. Give it as near as you can? A. I don't think I could state it correctly.

Q. In how many payments did he make this payment of \$5,000? A. When I took the deed, then he gave me—

Q. The balance? A. Yes, sir.

Q. About what was the date of the time of taking the deed? A. It was a three months' contract.

Q. Was it after or before the first of January? A. It was in the Fall.

Q. That you took the deed? A. Yes, sir; I am positive now that it was in December; Mr. Shaw said he wished to settle up with his partner, and he wanted to have it before the first of January.

Q. Mr. Shaw conveyed it? A. Mr. Shaw and Mr. Waterbury; I never saw Mr. Waterbury; I saw Mr. Shaw; he is a retired merchant.

Q. Did Judge Cardozo pay you the balance of the \$5,000 at that time? A. Yes, sir.

Q. Did he pay you in checks or bills? A. He gave me a check, I think.

Q. How did he pay you the last? A. He gave me a check.

Q. What was about the amount of the last payment? A. It was the balance of the \$5,000.

Q. There were two payments only? A. That was all.

Q. Which was the larger payment? A. I think the last one.

Q. Do you keep your check-books? A. I guess so.

Q. Have you the check-book from which the check of February 21, was cut? A. I think so. I didn't look.

Q. Did you draw another check on that day for the same amount? A. No, sir.

Q. How can you tell, if you didn't look at your check-book? A. I would have had it in my memory if I did.

Q. Have you any objection to producing your check-book? A. Not the least.

Q. Will you? A. If you wish it.

Q. I ask you to produce it at a later sitting to-day, that you may be quite sure. A. I had rather not do it to-day. I have some business to do, and which I must attend to.

By Mr. PRINCE:

Q. Will you have it here this evening? A. I think I could do it this evening. I had a letter this morning to go to see my father.

By Mr. VAN COTT:

Q. Send any one with your check-book, if you cannot come. A. I don't want to give my check-book to anybody but myself. I wish to do anything I can to facilitate your investigation. Do you wish me to bring my pay-roll?

Q. I do not care anything about that, if you produce the

check-book, and all your checks about that time. A. I keep three or four bank accounts. I will bring them all, if you wish.

Q. Bring all your check-books of that date. A. Yes, sir ; of that date.

Q. Can you tell about what amount of money came into your hands as Receiver, under your appointment by Judge Cardozo ?

A. I cannot.

Q. About how much ? A. Altogether ?

Q. Yes, sir. A. (After figuring.) About \$1,700. It will not exceed \$2,000.

Q. You mean the fees you have received. I am asking you as to the amount of moneys you have received—which have come into your hands as Receiver ? A. I thought you meant as fees.

Q. You are not able to state the amount that came into your hands as Receiver ? A. I am not at present.

Q. Who was your counsel as Receiver ? A. I had two counsel, altogether.

Q. Who were they ? A. I am trying to think of the name of one of them.

Q. Can you remember the name of the other, readily ? A. Yes, I can. Mr. Nathan—Gratz Nathan.

Q. He was counsel in how many of the Receiverships ? A. I think he was in the majority of them.

Q. Was he not in all of them ? A. No, sir.

Q. Was he in all but one ? A. I think he was.

Q. Do you remember what amount of fees he received as counsel in the cases in which you were Receiver ? A. I do not, exactly.

Q. Have you any means of stating the amount ? A. I could ascertain, if I had time to look over.

Q. Over your memoranda ? A. Look over my books.

Q. You will oblige me if you will state that amount to-night, when you produce your check-books. A. I will try.

EVENING SESSION.

APRIL 4.

The Committee met at 7½ o'clock P. M.

TERENCE FARLEY recalled. Examined by Mr. PRINCE:

Q. You were requested this morning to bring your check-book covering February 21, 1870. Have you got it here ? A. I have (produces check-book).

Q. Look under that date, and state what the entry is, if any, of the check on that day ? A. "Feb. 21—To pay men, Feb. 21, 1870, \$1,450."

Q. Look at the stubs through that month of February, and see if there is any other check of \$1,450, or about that amount,

during that month? A. "Feb. 14, 1870, \$1,500." The entry is—"To George F. Vogel, for work done to house, corner 58th street and Lexington avenue, Feb. 14, 1870, \$1,500." Also, "Feb. 8, 1870—To T. Farley, to pay men, \$1,500."

Q. These are all in that month, to about that amount? A. These are all.

In the matter of the charges against Hon. G. G. Barnard, one of the Justices of the Supreme Court. Before Judiciary Committee of the Assembly.

APRIL 11th, 1872—10 A. M.

Present—Mr. STRAHAN, of the Committee, and Judge FULLERTON.

WILLIAM BELDEN, being duly sworn, testified as follows :

I knew James Fisk, Jr., in his life-time. He was in business with me for some years in buying and selling stocks. I also know William Fullerton, and have known him for several years. I recollect that an action was commenced some years since by James Fisk, Jr., against the Union Pacific Railroad Company to compel that Company to recognize him as a large stockholder in that Company. After the action had been pending for some time, and, I think, in the Summer of 1868, William Fullerton called on me and said that he was authorized to settle the action with Fisk, and desired me to speak to Fisk on the subject, and see if he would entertain the proposition. I advised Fullerton to speak to Fisk himself, and got them together in my back office. They talked together there on the subject of settling the action a long time, but they separated without effecting anything. They met again afterwards in the same room on the same business. I heard some of the conversation which took place, but cannot repeat it all now, as I have not thought of the matter since. I do recollect, however, that they were trying to settle the suit, and I understood that Fullerton had offered fifty thousand dollars to effect the settlement, though I do not remember that I was present when it was accepted. Originally Fisk wished me to join him in subscribing for the stock, which was the subject of the action I have referred to, and I declined. He afterwards said to me that I might better have joined him in making the subscription, for he had made something handsome out of it. He thanked me for bringing him and Fullerton together as I did, saying that it was a great benefit to him, that he had made fifty thousand dollars out of it. I supposed at the time that he referred to the settlement of the suit. At a subse-

quent time he informed me that he had made a hundred thousand dollars out of it, but did not explain how. I got the impression at the time that Fisk and Fullerton met at my office, that the action was not to be prosecuted further, though I cannot tell now what was said on that subject; at all events, Fisk said he should do nothing further in the case.

In the matter of the charges preferred against Hon. Albert Cardozo, before the Judiciary Committee of the Assembly.

WILLIAM ST. CLAIR, recalled, at the request of the Committee, testified as follows:

When before the Committee the other day I was unable to testify from recollection, in reference to the orders of the Supreme Court appointing Commissioners of Estimate and Assessment, in the matter of opening a public place between Ninth avenue Boulevard and Sixty-third street. I have since ascertained from the records that the order appointing the Commissioners in that matter was made by Mr. Justice George G. Barnard, and that the order at Special Term confirming the report of the Commissioners in that matter was also made by Mr. Justice Barnard, who heard the motion.

By Mr. FULLERTON:

Q. What have been the relations between Judge Cardozo and you—friendly or otherwise? A. Well, sir, we have not been on speaking terms for some years. I opposed Judge Cardozo's election to the office of Justice of the Supreme Court. I have no unfriendly feeling toward the Judge, but he appears to have towards me. He has declined to speak to or notice me.

SAMUEL B. GARVIN, recalled on behalf of Judge Cardozo, testified as follows:

By Judge FULLERTON:

Q. What is the nature of the proceedings on writs of *certiorari* in regard to judgments in the Court of Special Sessions? A. On a return the prisoner's counsel can bring the case on for a hearing in the General Term or General Sessions. He is required to print the case under the rules in the Supreme Court at all events. Very frequently the error alleged is that but one Magistrate sat in the Court of Special Sessions, or under the old organization that but two of the Magistrates sat when three constitute a Court, or that some illegality of that description had

occurred ; and the question has always been considered so doubtful that the District Attorney has never had any desire to press these cases for the reason that the convictions in the Courts of a year amount to 2,000 or 3,000 in the Special Sessions, and if we should be so unfortunate as to have a decision against us in this matter the Penitentiary would be emptied. Hence, we have remained quiet in regard to these cases and let them sleep unless the counsel urge them on, and then of course we are compelled to act.

Q. Is it not a fact that when the law required the presence of three Police Justices to constitute a Court, it was generally held by two, and that when two were necessary it was held by one? A. I can't say generally, but in the *certiorari* cases to which I have referred it was so. Another difficulty was in regard to Special Sessions cases, that since its organization under the Act of 1870, I have always been afraid that that provision was unconstitutional.

Q. Since the decision in Huber's case in the Court of Appeals have you advised that the Court can only be legally held by three Judges? A. I have given a written opinion to that effect, and, in addition, advising the Police Justices that the Court consists of three Judges, and that their organization should be under the Act of 1858, which Act was re-enacted in 1870.

Judge Fullerton offered in evidence a certified copy of the opinion in Huber's case, marked Exhibit I, April 11th, 1872.

WILLARD BARTLETT, a witness, called by the Committee, being duly affirmed, testifies :

I have read the testimony of Mr. French in regard to the opening of a public place on 63d street, as the same was published in the *New York Herald*. As I was one of the Commissioners, I desire to state to the Committee the facts within my knowledge in regard to the transaction. So far as I know, and so far as I am concerned, the implication in Mr. French's testimony that the Commissioners had any knowledge whatsoever in regard to the alleged transactions between himself, Mr. Terrence Farley and Mr. Gratz Nathan, is not founded upon fact. Mr. James H. Coleman and William H. Tracy were the other Commissioners. I do not think I ever saw the order of appointment, but I have always understood that it was made by Justice Barnard. Although I never had any conversation with him in regard to the opening, immediately after receiving notice of our appointment, the three Commissioners visited the public place, or the land which was to be taken therefor, and on the suggestion of one of them, either Mr. Coleman or Mr. Tracy, I do not now recollect which, it was determined to base the award upon recent awards made in the adjacent boulevard, adding thereto the taxes and

interest for the current year, I think. Our Clerk was directed to calculate the amount of the entire award, on this basis, and that amount was that first fixed upon by the Commissioners. Subsequently, and after the due notices had been published, as I remember it, Mr. French applied for an increase of the award. I was very reluctant to make any, and said to my associates, and, I think, also to some of the representations of Mr. French, that I should not consent to making any unless the evidence in favor of an increase should seem to me conclusive. I also said that I would not be willing to act upon the affidavits of real estate men unless they were known to me, by reputation at least. Sometime thereafter Mr. French himself, as I recollect, testified before me. I do not know whether his testimony was taken down in writing or not, but my recollection is that he was asked by some of the Commissioners whether he was the owner of this property, and that he answered "Yes." And I recollect having in my mind at the time, and I think that I asked him that question, so as to ascertain whether he was acting in good faith. Finally, upon the testimony of twelve or more real estate owners, among whose names I recognized a number of the best known men in this city, engaged in that business, I agreed with my associates that the award ought to be raised, but would not raise it to the full amount desired by Mr. French. I did this because I believed we were bound to do it, in good faith towards the applicant, and as our duty. I supposed all benefit to be derived from such increase was to go to him; it was with that intention that I voted for it. I have no knowledge or information that either of the other Commissioners did not act on the same principles that controlled me. Until this investigation, I have never heard the names of either Justice Barnard or Justice Cardozo mentioned in connection with the Commissioners, except as I have said in regard to the original appointment, and I have no knowledge or no recollection, and I do not think I have ever had any knowledge as to whom the report was presented for confirmation. I have never had a word's conversation with Mr. Nathan in regard to the matter, except when he was before the Commission as counsel for Mr. French; and I will state that I do not think Mr. Nathan was the only counsel that appeared for Mr. French. My recollection is that somebody else appeared for him, but I cannot now say who.

By Mr. FULLERTON :

Q. He did appear ostensibly as Cardozo's counsel? A. Oh, yes; that is my recollection. Since this transaction occurred there has been nothing to call my attention to it particularly except when I received my fees as Commissioner, which I think were quite small, the only fees, money or benefit, which I have ever received in connection with the transaction. I never had any knowledge whatsoever of what Mr. French has certified to in regard to

his transaction with Mr. Farley until I read his testimony in the newspaper a few days ago. I never heard Mr. Farley's name mentioned in connection with the Commission until I read the testimony of Mr. French as aforesaid.

JACOB F. VALENTINE, a witness, called on behalf of Judge Cardozo, sworn and examined by Mr. FULLERTON.

Q. Are you acquainted with Judge Cardozo. A. Yes, sir.

Q. Have you been in the habit of doing some business for him from time to time? A. Yes, sir. I generally do all of his business.

Q. I want to ask you, did you go to Freehold at any time in 1870 to record some deeds for property which Judge Cardozo had been buying at Long Branch? A. I did in the fore part of January, 1870, go to Freehold to record some deeds for property at Long Branch.

Q. Judge Cardozo then, after that, was the owner of some property at Long Branch, was he? A. Yes, sir.

Q. Where he spent his Summer? A. Yes, sir.

Q. He has a plot of land there, and a cottage upon it? A. Yes, sir; on the sea shore.

Q. At any time prior to that date that you have mentioned, I want to know whether you made a deposit of bills for Judge Cardozo in the Mechanics' Bank? A. I did, sir, in December, 1869; in the middle of December, 1869, I made a deposit.

Q. Do you know how much there was? A. \$10,600.

Q. What was said on that day about that deposit? A. In the morning, when the Judge came down, I noticed that he had some bonds in his hands; he put his hands in his side pocket and drew out some bonds, and he made the remark that he was going to close up the Long Branch property transaction that day; that he was going to realize on those bonds, and wanted me to be on hand during the day to make a deposit for him when he received the money from those bonds.

Q. Did he, about that time, give you this money that you have spoken of to deposit? A. He did, sir; later in the day he called me and gave me \$10,600. I recollect the money being all new bills. Ten \$1,000 new bills, and a \$500 bill, and a \$100 bill. I recollect distinctly the circumstance.

Q. State whether, soon after that, he drew checks on that bank? A. I saw him, after he had taken the bonds out of his pocket and laid them down on the side of the desk, proceed to draw two checks.

Q. Do you recollect the amount of the checks? A. One was a little over \$5,000, and the other was \$4,000 and odd. There was a little over \$10,000 in the whole—between \$10,000 and \$11,000; the exact amount I could not state; but I recollect the circumstance of their being over five, and over four.

Q. State whether you have been in the habit of depositing money for Mr. Cardozo? A. I have, invariably in bills; I have been in the habit of depositing money for Judge Cardozo. I don't suppose any one else around here has, but me.

Mr. FULLERTON:

I offer in evidence now in connection with the testimony of Mr. Wm. St. Clair, in the matter relating to the widening and straightening of Broadway, an order made by Mr. Justice Cardozo, vacating and setting aside the order confirming the report of the Commissioners in that case, and also, the opinion delivered by him on making his order (marked Exhibit No. 2, April 11th, 1872.)

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